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THE BISHOP OF LINCOLN'S CASE.

A
REPORT OF THE PROCEEDINGS
IN THE
COURT OF THE ARCHBISHOP OF CANTERBURY
ON THE
OBJECTIONS TO THE JURISDICTION.

(REPRINTED FROM "THE LAW REPORTS," WITH THE SANCTION OF
THE INCORPORATED COUNCIL OF LAW REPORTING.)

WITH AN
APPENDIX
CONTAINING THE PLEADINGS,
AND A
SELECTION FROM THE AUTHORITIES CITED.

BY
E. S. ROSCOE,

BARRISTER-AT-LAW.

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TABLE OF CONTENTS.

	PAGE
INTRODUCTION	v
PREFATORY NOTE	vii
REPORT OF CASE AS TO THE JURISDICTION OF THE ARCHBISHOP OVER A PROVINCIAL BISHOP	1
REPORT OF CASE AS TO OBLIGATION OF BISHOP TO OBEY RUBRICS WHEN OFFICIATING AS A MINISTER	43

APPENDICES.

1. JUDGMENT OF PRIVY COUNCIL	46
2, 3. PLEADINGS	46

AUTHORITIES CITED.

4. RECOGNITION OF THE GENERAL COUNCILS BY THE COUNCIL OF HATFIELD	54
5. RECOGNITION OF THE GENERAL COUNCILS BY SYNODS OF NORTHERN AND SOUTHERN PROVINCES	54
6. RECOGNITION OF THE GENERAL COUNCILS BY THE CANONS OF AELFRIC	55
7. GENERAL COUNCIL OF CONSTANTINOPLE	55
8. GENERAL COUNCIL OF CHALCEDON	56
9. COUNCIL OF ANTIOCH	56
10. APOSTOLIC CANONS	57
11. WINFRID, BISHOP OF LICHFIELD	57
12. WILFRID, BISHOP OF YORK	57
13. TUNBERHT, BISHOP OF HEXHAM	58
14. WULSTAN, BISHOP OF WORCESTER	58
15. JOCELIN, BISHOP OF SALISBURY	58
16. GODFREY, BISHOP OF ST. ASAPH	59
17. TRIAL OF BISHOPS	60
18. EXTRACT FROM LEWIS' LIFE OF PEACOCK	60
19. CHENEY, BISHOP OF GLOUCESTER	61
20. GOODMAN, BISHOP OF GLOUCESTER	62

	PAGE
<i>APPENDICES—continued.</i>	
21. WOOD, BISHOP OF COVENTRY AND LICHFIELD	63
22. HACKETT, BISHOP OF DOWN AND CONNOR	68
23. BISHAM'S OPINION	69
24. HOOKER'S OPINION	70
25. TRIAL OF BISHOPS	70
26. DATES OF PROCEEDINGS OF LUCY <i>v.</i> WATSON, BISHOP OF ST. DAVID'S	26
27. PART I.—EPISCOPUS ST. DAVID <i>v.</i> LUCY	72
„ II.—LUCY <i>v.</i> BISHOP OF ST. DAVID'S	77

INTRODUCTION.

THE following pages contain a report reprinted from "The Law Reports," with the sanction of the Incorporated Council of Law Reporting, of the case of *Read v. The Bishop of Lincoln*, upon the point as to the jurisdiction of the Metropolitan over the Bishops of the province, and also upon that as to the duty of a Bishop to conform to the Rubrics when officiating as a minister at Divine service. There is also an appendix which contains the pleadings on which these two points were argued, and a selection from the very numerous and lengthy authorities referred to in the arguments. The judgment of the Archbishop of Canterbury is given verbatim, the arguments of counsel are in the form of a *précis*.

Each of the above questions is entirely distinct from any which may hereafter arise in the course of this litigation: the first is essentially historical in character, and so long as there exists an established Church, it must be of interest to every student of our constitutional history.

The object of the following pages is to furnish a convenient and permanent record of this noteworthy decision.

E. S. ROSCOE.

TEMPLE,
October, 1889.

PREFATORY NOTE.

ON June 2, 1888, a petition was presented to the Archbishop of Canterbury at Lambeth Palace, asking for a citation to be issued, calling on the Bishop of Lincoln to answer Articles alleging that he had offended against the law ecclesiastical by certain offences in regard to ritual.

On June 26 the Archbishop after consideration declined to issue the citation.

A petition on appeal from this refusal was then presented to the Privy Council, which was heard on July 20, and August 8, 1888 (1), the Bishop of Lincoln not appearing. The Privy Council allowed the appeal. (2)

On January 4, 1889, the citation was issued by the Archbishop of Canterbury. (3)

On February 12 the Bishop of Lincoln appeared, under protest, before the Archbishop at Lambeth, with whom were sitting as assessors the Bishops of London, Winchester, Oxford, and Salisbury, and Sir J. P. Deane, Vicar-General.

The following statement was read by the Bishop of Lincoln :—

“ MY LORD ARCHBISHOP :

“ I appear before your Grace in deference to the citation which I have received, and in accordance with my Oath of ‘ due reverence and obedience ’ to your Grace and the See of Canterbury ;

(1) There were present the Lord Chancellor Lord Halsbury, and Lords Herschell, Hobhouse, MacNaghten, and Sir Barnes Peacock, and as assessors the Bishops of London, Salisbury, Ely, Manchester, and Sodor and Man.

(2) The proceedings are reported L. R. 13 P. D. 221. The judgment is given in App. 1.

(3) The substance of the citation was the same as the Articles, for which see App. 2.

but I appear under protest, desiring, with all respect, to question the jurisdiction which your Grace proposes to exercise.

" I have been summoned to answer certain charges preferred against me before your Grace or your Grace's Vicar-General ; and if it should appear that such is the Canonical Court before which one of your Grace's suffragans ought to be tried for such alleged spiritual offences, and wherein such offences can be fully and freely adjudicated upon on their merits, I shall be ready and thankful to answer for myself.

" But your Grace will pardon me if I submit that, as an accused person, and also in view of the grave issues involved in this case, and of their bearing on the whole Church of England, as well as upon the position of all your Grace's suffragans, I feel obliged, at the outset, to do what in me lies towards securing for myself, and therein for all members of the English Episcopate, that form of ecclesiastical procedure by which your Grace's metropolitan authority can be most fittingly and regularly exercised.

" There can be no doubt that in accordance with the practice of the Primitive Church, the most proper method for the trial of a bishop in such cases would be before the Metropolitan with the comprovincial bishops.

" It may also be held that a trial before the Archbishop as sole judge might impair the rightful position of your Grace's suffragans, both individually and in relation to the province.

" I would, therefore, humbly pray your Grace to allow me to be heard by counsel on this point, whether your Grace's jurisdiction would not be more properly exercised, with regard to the matters charged against me, by your Grace as Metropolitan with the comprovincial bishops, such matters to be adjudicated upon on their merits by your Grace with the advice and consent of the bishops of the province, and whether, this being the case, I ought not to be dismissed from making any answer to the present citation.

" Having made this statement, I beg most respectfully to appoint my proctors, and leave all legal matters in their hands and those of my counsel."

The extended protest, answer, and conclusion were, after some interlocutory proceedings, in due course filed. (1)

The question of jurisdiction was argued on March 12, 13, 14, 20, 21, 26, 27, and judgment was given on May 11. In the following pages the substance of this argument and the judgment of the Archbishop of Canterbury, as reported in the LAW REPORTS, 14 P. D., p. 88, is given.

Subsequently the Articles (2) were brought in, and also certain grounds of objection, which were as follows :—

“The grounds on which the proctors for the defendant will object to the admission of the Articles are the following :—

1. There is no such jurisdiction as alleged in the Articles, and especially in Article 16.

2. The matters charged, seeing that they are charged as being done by the defendant as bishop, are not offences against the laws, canons, and constitutions of this Church and realm and of the province of Canterbury.”

A further question of law was thus raised as to whether the word minister in the Rubrics and Acts of Uniformity included a bishop, and was argued on July 23 and 24, 1889. The argument and judgment is given after that on the judicial jurisdiction of the Archbishop of Canterbury.

With any further proceedings in this litigation the present report is not concerned.

(1) See App. 3.

(2) See App. 2.

[IN THE COURT OF THE ARCHBISHOP OF CANTERBURY. (1)] March 12, 13,

14, 20, 21, 26,

READ *v.* BISHOP OF LINCOLN.

27;

May 11.

*Ecclesiastical Law—Bishop—Illegal Practices in Conduct of Divine Service—
Jurisdiction of Archbishop of Canterbury.*

The Bishop of Lincoln was cited to appear before the Archbishop of Canterbury to answer the charge of having been guilty of illegal practices in the conduct of divine service. The bishop appeared under protest denying that the archbishop had jurisdiction to try a bishop of the Province of Canterbury, and affirming that the proper tribunal was the archbishop and other bishops of the province assembled in Convocation or otherwise:—

Held, that the archbishop sitting alone or with assessors had jurisdiction to entertain the charge.

OBJECTION to the jurisdiction. The promoters in the suit were E. Read, W. Brown, T. F. Wilson, and J. Marshall. The respondent was the Lord Bishop of Lincoln.

By a citation dated January 4, 1889, the Bishop of Lincoln was summoned to appear before the Archbishop of Canterbury at Lambeth Palace for having committed several ecclesiastical offences, viz. (1) having used lighted candles on the communion table, or on a ledge over it, for ceremonial purposes; (2) for having used water and wine for the purpose of the Holy Sacrament and consecrated the same; (3) for having stood with his back to the people while reading the Prayer of Consecration; (4) for having permitted the hymn *Agnus Dei* to be sung; (5) for having made the sign of the cross; (6) for having taken part in the ceremony of ablution, i.e., pouring wine and water into the paten and chalice. These offences were alleged to have been committed on December 4, 1887, in the church of St.-Peter-at-Gowts; (7), (8), (9), and (10) were offences of the same kind, alleged to have been committed on a different day in Lincoln Cathedral. This citation the Archbishop of Canterbury had previously refused to issue, not being satisfied that he had juris-

(1) The Vicar General of the Province of Canterbury (Sir J. P. Deane) sat with the Archbishop and also the Bishops of London, Winchester, Oxford, and Salisbury, as assessors.

1889

READ
v.
BISHOP OF
LINCOLN.

diction in the matter. On appeal to the Privy Council from the refusal, it was held that the archbishop had jurisdiction. (1)

On February 12, 1889, the Bishop of Lincoln appeared under protest at Lambeth Palace before the Archbishop of Canterbury, and his assessors, and prayed that he might be heard by counsel in support of his protest.

On February 19, the extension of the protest of the Bishop of Lincoln was brought in. The grounds of the protest were that there was no jurisdiction to cite the bishop before the archbishop, because the citation did not cite the bishop to appear in any Court whereof the laws, canons, and constitutions, take cognizance; second, because the bishop was not bound to appear before the archbishop sitting alone, or before the Vicar-General of the archbishop; third, because the Bishop of Lincoln as a bishop of the Province of Canterbury ought not to be tried for the offences with which he was charged, except by the archbishop and the other bishops of the province assembled either in Convocation or otherwise; and fourth, because the charges in the citation were not such as the bishop was bound to answer or be tried for by any Ecclesiastical Court.

On March 1, the answer of the promoters was brought in denying the averment of the extended protest.

On the same day the Vicar-General concluded the proceedings.

March 12. The arguments as to the jurisdiction of the archbishop were begun.

Sir W. Phillimore and *Jeune, Q.C.* (*A. B. Kempe*, with them), for the Bishop of Lincoln. There are three objections, raised by the protest, to the jurisdiction of the archbishop as sole judge; first, that he cannot, sitting alone, try, condemn, or sentence a bishop of the province, because the proper tribunal consists of the bishops of the province together with the archbishop, assembled in synod, that is summoned by writ from the Crown to sit in convocation. Secondly, a bishop is not bound by the rubrics of the Prayer Book, so far as they refer to priests and ministers. (2) The Bishop

(1) *Ex parte Read*, 13 P. D. 221.

(2) As to this point, see p. 12, note (1).

of Lincoln was therefore at liberty to depart from those rubrics, and the citation discloses no ecclesiastical offence, inasmuch as it refers only to acts in respect of which the rubrics are binding on ministers and priests. Thirdly, assuming that the Bishop of Lincoln is not bound by these rubrics, proceedings in respect of the acts charged against him cannot be brought in an Ecclesiastical Court. For they are offences, if offences at all, created by the Acts of Uniformity, and cognizable only by the temporal Courts.

As to the first head of argument. A preliminary point in respect of this head is that the authority of the archbishop before the Reformation, as legate of the pope, must be distinguished from his authority as metropolitan. His jurisdiction as metropolitan must be ascertained by reference to the law of the Church of England, which has been defined as follows: "The law of the Church of England and its history are to be deduced from the ancient general canon law—from the particular constitutions made in this country to regulate the English Church—from our own canons, from the rubric, and from any Acts of Parliament that may have been passed on the subject; and the whole may be illustrated also by the writings of eminent persons." (1)

See also *Evans v. Ascutie* (2), *per* Dodderidge, J. A further authority is the case of *Reg. v. Millis* (3), where dicta to the same effect are to be found.

As regards the canon law. The canons of the first four general councils support the first ground on which the protest is based. They form part of the ecclesiastical law of England, because they have been accepted (a) by English synods, (b) by Parliament, (c) by the Courts. Only such of the general canons as have been accepted in this country are authoritative. The first authority for the statement that these canons have been accepted by English synods is the recognition of the general councils by the council of Hatfield, A.D. 680 (4), the second their recognition by synods of the northern and southern provinces,

1889

READ
v.
BISHOP OF
LINCOLN.
—
Argument.

(1) *Per* Sir J. Nicholl, *Kemp v.* pp. 678, 680, 745.

Wicks, 3 Phill. 276.

(2) *Palm*. 457.

(3) 10 Clark & Finnelly, 534, at p. 142. App. 4.

(4) Haddan and Stubbs, *Councils and Ecclesiastical Documents*, vol. iii.

1889
 READ
 P.
 BISHOP OF
 LINCOLN.
 Argument.

A.D. 787 (1), the third, their recognition by the canons of Ælfrie in A.D. 970. (2) The authorities for the statement that they have been recognised by Parliament are 25 Hen. 8, c. xix. s. 7; 1 Eliz. c. 1, s. 36.

The authority for the statement that these canons have been recognised by the Courts is the case of *Reg. v. Archbishop of Canterbury*, in which Coleridge, J., says: "The case on the part of the applicants commenced with evidence offered even from the apostolic ages of the Church. I am content to start from the general councils. I presume the authority of these councils, on a matter of Church government in England before the Reformation, will not be questioned. Even as to matters of doctrine, their authority is expressly recognised by the legislature, after the Reformation, in the Statute 1 Eliz. c. 1, s. 36." (3)

The canons relied on as shewing that the archbishop alone has not jurisdiction to try a provincial bishop, but that the proper tribunal is the synod are Canon 6 of the General Council of Constantinople (4), Canons 1 and 9 of the General Council of Chalcedon (5), Canons 9, 12, 13, 14 and 15 of the Council of Antioch (6), and Canons 27 and 66 of the Apostolic Canons. (7)

The cases of *Wynfrid, Bishop of Lichfield* (A.D. 673) (8), and *Wilfrid, Bishop of York* (A.D. 678) (9), which have been confused by Lord Holt, are authorities in favour of the present contention, as each prelate was removed by the synod and not by Archbishop Theodore. Then follows the case of *Tunberht, Bishop of Hexham* (A.D. 684). (10) Even William the Conqueror when he tried to depose *Wulstan, Bishop of Worcester* (11), summoned a synod

(1) Haddan and Stubbs, Councils and Ecclesiastical Documents, vol. iii. pp. 448, 450; App. 5.

(2) Wilkins' Concilia, vol. i. p. 254; Hook's Lives of the Archbishops of Canterbury, vol. i. p. 441. App. 6.

(3) 11 Q. B. Rep. 483.

(4) Johnson's Vade Mecum, part ii. p. 129, 4th ed. App. 7.

(5) Johnson's Vade Mecum, part ii. p. 139, 4th ed. App. 8.

(6) Johnson's Vade Mecum, part ii. pp. 91, 95, 96, 97, 4th ed. App. 9.

(7) Johnson's Vade Mecum, part ii.

pp. 20, 33, 4th ed. App. 10.

(8) Anglo-Saxon Chronicle (Roll's Ed.) vol. ii. p. 29. App. 11. Bede's Ecc. Hist. bk. 4, ch. vi. (Bohn's Ed. p. 183).

(9) Eddius Vita S. Wilfridi, cap. lv.-lvi. in Gale Scriptores xv. vol. i. p. 83. App. 12.

(10) Florentius Wigornensis (ed. Thorpe, 848), p. 38. App. 13.

(11) Mathew Paris, Chronica Majora (Roll's ed.) vol. ii. p. 40. App. 14. Historia Anglorum (Arches ed.) vol. i. p. 53.

for the purpose. In the case of *Jocelin, Bishop of Salisbury* (1), in 1166, the bishops protested against Becket's action in suspending him without their authority, and in that of *Godfrey, Bishop of St. Asaph* (2), in 1175, the archbishop acted with the authority of the bishops in synod. The case of *Nicholas, Bishop of Llandaff* (3), in 1177, has been relied on by a writer, the Archbishop of Spalatro, as shewing that the archbishop had the power of trying and deposing a bishop. But that instance is not in point. There was there litigation between the Abbot of Malmesbury and the Bishop of Salisbury. The Bishop of Llandaff was not a party to the proceedings, and was suspended for not obeying an inhibition or prohibition—in fact, for contempt of Court. There is also the opinion of the Bishop of Winchester at the Council of Oxford. (4) Another authority in 1344 is the statement in a petition of bishops to the king that the pope alone could judge one of them. (5)

1889

READ
v.
BISHOP OF
LINCOLN.
Argument.

In 1359 there was the case of the *Coadjutor Bishop of Hereford*, (6) who was cited by the archbishop to appear before Convocation for neglect of his duties. In 1457 came the important case of *Peacock, Bishop of Chichester*, (7), but this was a proceeding against the books rather than the writer of them, and throughout the proceedings there was no sign of the archbishop having jurisdiction alone; he formed a part of the council.

Next in order follows the case of *Cheney, Bishop of Gloucester* (8), in 1571; the proceedings in it are those of Convocation.

(1) Materials for Hist. of Becket (Roll's ed.) vol. v. pp. 403, 406, 407, 421. App. 15.

(2) Haddan and Stubbs' Councils and Ecclesiastical Documents, vol. i. p. 377; Wilkins' Concilia, vol. i. p. 479, n. App. 16.

(3) Haddan and Stubbs' Councils and Ecclesiastical Documents, vol. i. p. 385.

(4) Malmesbury Historia Novella, lib. ii. 21; ed. Hardy, 1840. App. 17.

(5) Rotuli Parliamentorum, vol. ii. p. 151; Gibson's Codex Ecclesiasticus, vol. i. ch. vii. p. 129.

(6) Wilkins' Concilia, vol. iii. p. 45.

(7) Lewis' Life of Peacock, ed. 1820. App. 18. Hook's Lives of the Archbishops of Canterbury, vol. v. p. 293; Registrum Abbati Johannis Whethamstede (i. 279 *et seq.* Roll's Series); Wilkins' Concilia, vol. iii. p. 576; Babington's Preface to Peacock's Repressor; Loc. e Libro Veritatum, Passages Selected from Gascoigne's Theological Dict. (Liber Veritatum) by J. E. T. Rogers, Oxford, 1881, pp. 208 *et seq.*

(8) Strype's Parker, vol. ii. p. 52; For form of excommunication, Strype's Parker, vol. iii. p. 182. App. 19.

1889
 READ
 C.
 BISHOP OF
 LINCOLN.
 A. K. TRICHL

Then follows the case of *Goodman, Bishop of Gloucester* (1), in 1640, who was on the point of being deprived by the archbishop and bishops in synod when he altered his mind and escaped. In 1684 there is the case of *Wood, Bishop of Lichfield*, who was suspended by the official principal of the Court of Arches; this was a civil suit by the executors of his predecessor for dilapidations, which was referred to the arbitration of Bishops of London and Peterborough, and there was also a criminal suit which was likewise referred, and an award was made against the bishop and also a sentence of deprivation by the arbitrators, which was confirmed officially (2)—it is no authority for or against the Bishop of Lincoln, the proceedings were altogether irregular. In 1686 it was attempted to suspend *Bishop Compton of London* through the agency of Lords Commissioners, by virtue of King James' prerogative, for not having himself suspended a priest who had preached a seditious sermon. (3)

In 1672 occurred the Irish case of *Hacket, Bishop of Down and Connor* (4), who was deprived by a species of commission consisting of the Bishops of Meath, Dromore, and Derry; this case does not shew any exercise of jurisdiction by the Metropolitan alone.

Next, as to the authorities to be found in the writings of authoritative and eminent writers. The writings of M. A. De Dominis, Archbishop of Spalatro, were relied on by Lord Holt in the *Bishop of St. David's Case* for the proposition that an archbishop has the same authority over a suffragan bishop as the bishop over one of his inferior clergy. (5) But this writer is not a sound authority: there is no inconvenience in assembling synods as he asserts, there is no positive law giving sole jurisdiction to the archbishop, and there are no precedents to this effect. The instance which the Archbishop of Spalatro relies on in s. 15,

(1) Gibson's *Synodus Anglicana* (Oxford ed.) pp. 191, 195. App. 20. Fuller's *Church Hist.* Bk. x. cent. 17.

(2) Cardwell's *Documentary Annals*, p. 352. An original extract from the registry of the Arches Court of Canterbury was also read by counsel. App. 21.

(3) *State Trials*, vol. xi. p. 1123, *et seq.*

(4) Mant's *History of the Church of Ireland*, vol. ii. p. 41. App. 22.

(5) *De Republicâ Ecclesiasticâ*, Bk. iii. ch. 7, ss. 1, 2, 9, 12, 15, 16, 17, 18, 19, 20.

namely, the action of Pope Gregory, is not to the point, that of St. Basil has not been given accurately by him, and is no authority for his statement (1), nor is that of Florentius (2), Bishop of Epidaurus. The book was written to assert the authority of the Metropolitan against the Pope, and with a partisan object. The whole argument in it is based on the idea that the power of synods passed into the hands of the Metropolitans. This may have been so in other countries where synods fell into disuse, but in this country Convocation did not lose its powers, but always exercised them.

The following eminent writers are in favour of the theory on which the protest is based in this case. Of these, the first is Bingham (3), then follows Hooker (4), then Barrow (5), then Roger Twisden. (6) Johnson says of the synod, "this assembly has power to correct and depose bishops" (7); Archbishop Parker (8) is also an authority to the same effect.

The following authorities are of a negative character: that is, the powers of the archbishop are fully enumerated, but that of deposing a bishop is not mentioned, and therefore it may be assumed that it did not exist. They are Strype—Life of Archbishop Parker (9), Mocket (10) (1617), Cosin (11) (1634), Zouch (12), Clarke (13) (1596), and Godolphin (14) (1687). Noticeable also is the letter of Archbishop Sheldon in answer to the Archbishop of Gnesen in Poland. (15) [All the above authorities were examined and referred to in detail.]

1889

READ
v.
BISHOP OF
LINCOLN.
Argument.

(1) 53rd Ep. of St. Basil.

(2) St. Gregory's Epistles, Bk. iii. Ep. 8.

(3) Antiquities of the Christian Church, bk. ii. ch. 16, ss. 14, 16. App. 23.

(4) Ecclesiastical Polity, bk. vii. ch. 16, s. 7. App. 24.

(5) Treatise of Pope's Supremacy, vol. vii. p. 494 (ed. 1830).

(6) An historical vindication of the Church of England in point of schism as it stands separated from Rome, and as reformed primo Elizabeth, p. 25.

(7) Johnson's Vade Mecum (6th ed.) ch. 16, p. 154.

(8) De Antiquitate Britannicæ Ecclesiæ et Privilegiis Ecclesiæ Cantuariensis, p. 37.

(9) Vol. iii. p. 177.

(10) Politia Ecclesiæ Anglicanæ, ch. iv. p. 29 (3rd ed.).

(11) Ecclesiæ Anglicanæ Politia, ch. iii.

(12) Descriptio Juris et Judicia Ecclesiastica Anglicana, pt. iii. s. 3.

(13) Praxis in Curiis Ecclesiasticis, T. 4, T. 5 (2nd ed.).

(14) An Abridgment of Ecclesiastical Laws, ch. ii. p. 18.

(15) Wilkins' Concilia, vol. iv. p. 597.

1889
 READ
 BISHOP OF
 LINCOLN.
 A. 1889

The canons of 1604 are affirmative evidence; they give power to the archbishop to suspend a bishop from ordaining priests for a limited time, and even in the case of suspending a bishop from one of his functions only, they require the archbishop to be assisted by another bishop. It would be very anomalous that the archbishop alone should be able to deprive a bishop, but not suspend him from one of his functions. This shews, therefore, that the power of deprivation generally could not exist in an archbishop. (1)

There are also some authorities to be mentioned, which are supposed to be against the Bishop of Lincoln, but are in reality not so. The first is Lyndwood (2), in which the word "prælatorum" means not bishops but abbots; compare on this point the Constitution of Bishop Poore of Salisbury and Bishop Richard of Durham (3), Rolle's Abridgement (4), Viner's Abridgement (5), Speed (6), and Eadmer. (7) A passage in the Year Books (8) which has been relied on as supporting the archbishop's jurisdiction to deprive a bishop for dilapidations is no more than the argument at the bar of counsel; the so-called *Bishop of Salisbury's Case* (9) is no authority, for on investigation it has been found that no Bishop of Salisbury was deprived or tried. Neither is there any authority for Sir Simon Degge's (10) statement to the same effect. Moreover, it appears by the note to the statement that the deprivation is to be *judicio episcoporum*. Of the best writers after the *Bishop of St. David's Case*, it is sufficient to say that their view of the law is based on that case and adds no weight to it. These writers are Oughton (11), Ayliffe (12), and Gibson. (13) [The above authorities were also examined at length.]

(1) Canon xxxiii., Canon xxxv., Canon xxxvi., Wilkins' Concilia, vol. iv. p. 353.

(2) Provinciale, App. p. 30, citing Constitution of Archbishop Edmund (1234). App. 25.

(3) Spelman's Concilia, vol. ii. pp. 145, 170.

(4) Evesque (G.) Investiture I.

(5) Evesque (G.) Investiture I.

(6) History of Great Britain, 2nd

ed. p. 446, s. 13

(7) Historia Novorum (Roll's ed.) pp. 141, 142.

(8) Y. B. 2 Hen. 4, 3 b.

(9) Godbolt's Rep. 259.

(10) The Parson's Counsellor, pt. i. ch. viii.

(11) Prolegomena, p. 16, s. 11.

(12) Parergon, p. 92 (2nd ed.).

(13) Codex, vol. ii. p. 133, and p. 1096, n.

The case of *Lucy v. Watson, Bishop of St. David's* (1) is regarded as the main authority in favour of the jurisdiction of the archbishop. But in none of its various stages, nor in any of the courts before which it went, is it any authority. When Bishop Watson appeared under protest it was only to guard his privileges as a peer. The ground of his objection to the archbishop's jurisdiction on February 20, 1699, was that the offences with which he was charged were cognisable by the temporal and not the Ecclesiastical Courts. His appeal to the delegates on February 16, 1700, was dismissed because he took objection to the archbishop's jurisdiction at too late a period. The first prohibition was applied for and refused—(a) on the ground that the form of execution was bad; (b) that the matters were proper for the decision of a temporal court. In the House of Lords, on December 6, 1699, the bishop's application to resume his privilege was negatived by a party vote, and there is nothing to shew that the question of the jurisdiction of the archbishop was involved in the decision. [The learned counsel then criticised the arguments of the counsel before the House of Lords.] The second prohibition was applied for generally, but the decision of the Court is no authority on the present point, because it was not an attempt on the part of the bishop to prove that the archbishop could not pass a sentence of admonition but that he could not deprive. Further, Lord Holt refused the prohibition on the

1889

READ
v.
BISHOP OF
LINCOLN.
Argument.

(1) For the proceedings in the *Bishop of St. David's Case*, in chronological order, see App. 26; for judgment of Lord Holt, App. 27. The proceedings before the delegates are noted in the Delegates' Processes, vols. ccxxvii. pt. i. p. 1; p. 208, d.; p. 831, d., and in the Delegates' Assignment Book. The case in the Queen's Bench on the first proceedings for a prohibition is reported 1 Ld. Raym. 447; 12 Modern, 237; and Carth. 484; and the proceedings for the second prohibition, 1 Ld. Raym. 539; those on which the writ *excommunicato capiendo* was quashed, 2 Ld. Raym. 817. The proceedings for intrusion in the Court of

Exchequer were cited from Queen's Remembrancer, Memoranda Roll, Mich. 13 Will. III. mcix. App. 27.

The proceedings in the House of Lords are reported in 14 State Trials, p. 447, *et seq.*; Dr. Hody's MSS. Lambeth Palace Library, p. 3; Journals of the House of Lords, March 7, 18, 20, 1695–6; Nov. 29, Dec. 4, 6, 1699; March 1, 2, 5, 8, 1699–1700; Dec. 14, 22, 1704; Jan. 12, 17, 21, 25, 1704, 1705. The case is also noted in Luttrell's Diary, vols. iii., iv. and v., and in Burnet's History of His Own Time, vol. iv. pp. 17, 21, 25. (Clarendon Press Ed. 1823.)

1882
 READ
 P.
 BISHOP OF
 LINCOLN.
 Argument.

ground that the not taking by the archbishop of third persons to his assistance was not ground for a prohibition, and also because it was without precedent to grant a prohibition to an Ecclesiastical Court if the proceedings therein were contrary to the canons. The appeal to the House of Lords, on March 2, 1700, was rejected, because error cannot be brought on refusal of a prohibition, and it did not involve the present point: and the writ *excommunicato capiendo* was quashed on a point of pleading.

[They also argued that in the time of Lord Holt the granting of a writ of prohibition was discretionary: *St. John's College, Cambridge v. Toddington* (clerk) (1), *Mayor of London v. Cox*. (2)]

The *Bishop of St. Asaph's Case* (3) in 1701 is no authority; he confessed his offence and was suspended. The case of the *Bishop of Clogher* (4) is at most of no greater weight than that of the *Bishop of St. David's*, on which it was partly based. But it is opposed in some ways to that case; the tribunal was composed of the Archbishop of Armagh and four bishops of the province, of the remaining three one was the incriminated party, one was dying, and one was abroad. [The learned counsel read the sentence signed by the archbishop.] Dr. *Stephens*, a writer with exceptional knowledge of Irish ecclesiastical law, asserts that all the bishops were summoned to remove any doubt as to the proper tribunal. But the case of the *Bishop of St. David's*, assuming that it decides what the promoters of this suit assert that it does, has been overruled by the Privy Council. In *Long v. Bishop of Capetown* (5) it was held that Mr. Long had bound himself to obey the authority of his bishop, the extent of that authority being determined by the laws of the Church of England, so far as they were applicable to the colonies. In the later case, *Ex parte Bishop of Natal* (6), this same consensual jurisdic-

(1) 1 Burr. 159.

(2) Law Rep. 2 E. & I. 239.

(3) Tracts of the Archbishops and Bishops (Lambeth Library Collection), p. 113, K. 17; State Trials, vol. xiv. p. 468; Burnet's History of His Own Times (Ed. 1823), iv. p. 450.

(4) Phillimore, Ecc. Law, p. 91; Stephen's Laws of the Clergy, i. 167; Burns' Ecc. Law (edited by Phillimore) i. p. 415 (R. R.).

(5) 1 Moo. P. C. (N.S.) 411; Broderick & Freemantle, p. 294.

(6) 3 Moo. P. C. (N.S.) 115.

tion, but as between a bishop and his metropolitan, was relied on, but the Privy Council held that it is not incident to the office of suffragan and metropolitan in English law that the latter can deprive a bishop: *Bishop of Natal v. Gladstone* (1) is to the same effect. If the archbishop has the power contended for by the promoters, then *sede vacante*, it is in the Dean and Chapter of Canterbury: Case of the *Dean and Chapter of York* (2), *Parham v. Templar*. (3) Having, it is submitted, shewn that the archbishop has not the jurisdiction contended for by the promoters in this suit, it can be proved positively that Convocation is a judicial tribunal with jurisdiction to try bishops and ministers. The authorities for the contention are, Lord Coke (4); *Sawtre's Case* (1400) (5); *Herbert v. Seygno* (1402) (6); *Rector of Wortham's Case* (1416) (7); *Richard Walker's Case* (1419) (8); *Tailour's Case* (1421) (9); *Russell's Case* (1424) (10); *Mungyn's Case* (1428) (11); *Hugh Latimer's Case* (1530) (12); *Bishop Cheney's Case* (13); *Bishop Goodman's Case* (14); *Whiston's Case* (1710) (15). [The learned counsel read the several cases at length with comments.]

The Statute of Citations (23 Hen. 8, c. 9), is not an authority in favour of the archbishop's jurisdiction. It deals not with Convocation but with the Courts of the archbishops, bishops, and other ordinaries: it is intended by it to deal only with spiritual offences, as the refusal of a bishop to institute to a living, to grant a marriage licence, and to prevent the citation of persons out of their own diocese, as for example, the Bishop of London from citing any one within the "peculiar" of St. Paul's who

1889

READ
v.
BISHOP OF
LINCOLN.
Argument.

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| (1) Law Rep. 3'Eq. 1. | (11) Wilkins' Concilia, iii. p. 501. |
| (2) 2 Q. B. 1; Rothery's Return, | (12) Wilkins' Concilia, iii. p. 725. |
| p. 29. | (13) Strype's Parker, ii. p. 52; iii. |
| (3) 3 Phill. 223. | p. 182. |
| (4) Institutes, 4th pt. ch. 74, Of | (14) Gibson's Synodus Anglicana |
| Ecclesiastical Courts. | (Oxford Ed.), pp. 191, 195; Fuller's |
| (5) Wilkins' Concilia, iii. p. 255; | Church Hist. bk. xi. cent. 17. |
| Fitzherbert Natura Brevium, ii. p. 269. | (15) Broderick & Freemantle, p. 320; |
| (6) Wilkins' Concilia, iii. p. 270. | Cardwell's Synodalia, ii. p. 753; 15 |
| (7) Wilkins' Concilia, iii. p. 377. | State Trials, p. 714. The above cases |
| (8) Wilkins' Concilia, iii. p. 393. | are also collected: Report of the Eccle- |
| (9) Wilkins' Concilia, iii. p. 404. | siastical Courts Commission, 1881, |
| (10) Wilkins' Concilia, iii. p. 428. | App. 2, p. 54. |

1889
 READ
 BY
 BISHOP OF
 LINCOLN.
 ATTORNEY.

would be subject only to the jurisdiction of the Dean and Chapter. (1)

Sir H. Darcy, Q.C., and *Tristram, Q.C.* (*Danckwerts*, with them), for the promoters. The archbishop, sitting with assessors, has jurisdiction to try this case. The case of *Lucy v. The Bishop of St. David's* (2) is a final and a binding decision to this effect: the point as to the jurisdiction of the archbishop was taken, not only in the Court of Queen's Bench, but also before the delegates on the hearing of the appeal on February 16, 1700; for the latter tribunal decided that it was "unanimously of opinion that the archbishop had and that this Court hath, jurisdiction in this cause." In the Court of Queen's Bench the personal jurisdiction of the archbishop was directly in issue on the first and on the second occasion. On the second occasion it was decided that the archbishop had jurisdiction to deprive, which necessarily included the minor proposition that he could try. The same question of jurisdiction was directly decided in the House of Lords with the assistance of ten judges; the same points which have been raised in the present case were therefore raised in that of *Lucy v. Bishop of St. David's*. (2) The same question of the archbishop's jurisdiction was raised and decided before the Court of Exchequer in the hearing of two informations of intrusion against Bishop Watson and his wife: Q. R. Memoranda Roll. [They referred to passages beginning at p. 80, line 28; p. 81, line 19; p. 82, line 5; p. 83, line 2; p. 84, line 18; p. 85, line 4; p. 86, line 31; p. 86, line 48; p. 87, line 27; p. 89, line 32. (3)] The argument that Bishop Watson failed to take the objection to the jurisdiction in time has no weight, because an objection which goes to the root of the jurisdiction may be taken at any time in prohibition: *Roberts v. Humby* (4), *Mayor of London v. Cox* (5). The same principle applies to objections in the Ecclesiastical Courts, as an objection to the jurisdiction could be taken before

(1) It was arranged, with the consent of the Court, that the arguments on the two second objections should stand over for the decision on the first objection.

(2) For references, &c., see ante,

p. 8, note (11); and for dates, see App. 26; for judgments, App. 27.

(3) A translation prepared for this case was referred to. App. 27.

(4) 3 Mee. & W. p. 120

(5) Law Rep. 2 H. L. 239.

the delegates: *Taylor v. Mozley* (1) Consett's Practice of the Ecclesiastical Courts, p. 66; *Lucy v. Bishop of St. David's* (2nd appeal to delegates).

The case of *Ex parte Bishop of Natal* (2) does not affect the jurisdiction of the Archbishop of Canterbury, it only decides that as the Queen has no power by letters patent to erect a Court having coercive jurisdiction in a colony, therefore the taking of the oath of canonical obedience by a colonial bishop did not give his metropolitan coercive jurisdiction. As to the canons of the Church—the disciplinary canons of the first four councils have never been received as part of English law, the canons which have been received affect matters of doctrine; and it can only be by shewing usage that authority can attach to them: *Wilson v. McMath* (3), *Rex v. Archbishop of Canterbury*. (4) Canon 12 of the Council of Antioch (5) is incompatible with the Queen's supremacy and so cannot be part of English law.

[They referred to the recognition of the Canons of the Council of Hatfield (6), by the Synods of the Northern and Southern Provinces (7), and by the Canons of Ælfrie (8), and argued that they were only recognitions of doctrine.]

As to authorities cited on behalf of the Bishop of Lincoln, the opinion of the Bishop of Winchester at the Council of Oxford (9), is of no value. The complaint of the Bishops to Pope Alexander (10) proves nothing: if anything, it is in favour of the promoter's contention; nor is the letter of Archbishop Sheldon (11) an authority. The case of the coadjutor *Bishop of Hereford* (1359) (12), is an instance in favour of the present promoters, he was, it is true, summoned to appear before the archbishop "in concilio," but the archbishop was and describes

1889

READ

v.

BISHOP OF
LINCOLN.

Argument.

(1) 1 Curteis Rep. 470, p. 484.

(2) 3 Moo. P. C. (N.S.) 115.

(3) 3 Phill. 79.

(4) 11 Q. B. Rep. 649.

(5) Johnson's Vade Mecum, part ii.
p. 95, 4th ed.(6) Haddan & Stubbs' Councils and
Ecclesiastical Documents, iii. p. 142.
App. 4.(7) Haddan & Stubbs' Councils and
Ecclesiastical Documents, iii. pp. 448,

450. App. 5.

(8) Wilkins' Concilia, vol. i. p. 251;
Hook's Lives of the Archbishops of
Canterbury, p. 444.(9) Malmesbury Historia Novella
Lib. ii. s. 21 (Ed. Hardy, 1810).
App. 17.(10) Materials for Hist. of Becket,
vol. v. pp. 406, 407, 421.

(11) Wilkins' Concilia, vol. iv. p. 597.

(12) Wilkins' Concilia, vol. iii. p. 45.

1889

READ
 C.
 BISHOP OF
 LINCOLN.
 —
 Argument.

himself as "judex:" he at the time merely happened to be sitting in the synod. In the proceedings in the earlier case (in 1177) of the *Abbott of Malmesbury*, the Bishop of Llandaff was suspended by the authority of the archbishop himself, "nos autem suspendimus" are the words in the record. (1) It is contended that in all the cases referred to the archbishop exercised a personal jurisdiction, sometimes having to sit in Convocation, sometimes with assessors: the case of *Bishop Peacock* (2) is a direct instance of the latter fact and a precedent for the present proceedings, for the assessors were the Bishops of Winchester, Lincoln, and Rochester. The cases (3) relied on from *Sawtre's Case* to *Goodman's Case* shew no fixed practice and prove, if they prove anything, that an archbishop cannot try a priest except in Convocation. The cases of *Bishop Cheney*, (4) and *Bishop Goodman*, (5), do not disclose strictly ecclesiastical offences at all, they shew arbitrary usurpations of power.

The opinion of the judges in *Whiston's Case* (6) was not a judicial opinion or a judicial precedent, but no result was attained because, as Bishop Burnet points out, it was not known how the Court was to be constituted. Lyndwood's *Provinciale* is an authority, for in his comments on this Constitution, he says in explanation of it, "Prælatorum, sc. episcoporum, qui, etc." (7) Lyndwood was the most eminent of English canonists, and his authority is accordingly great. The Canons of 1604 (8) are in favour of the promoters, for the jurisdiction of the archbishop is assumed, and in some instances they create new ecclesiastical offences, in others they regulate the jurisdiction. The Statute of Citations (23 Hen. 8, c. 9), recognises the jurisdiction of the archbishop, and of the possibility of a bishop being cited before him. Again, in 25 Hen. 8, c. 19, abolishing an appeal to the pope

(1) Haddan & Stubbs' *Councils and Ecclesiastical Documents*, vol. i. p. 385.

(2) *Lewis' Life of Peacock* (Ed. 1820), pp. 143-157. App. 18.

(3) See ante, p. 11, for cases and references.

(4) *Strype's Parker*, vol. ii. p. 52; vol. iii. p. 182. App. 19.

(5) *Gibson's Synodus Anglicana*

(Oxford ed.), pp. 191, 195; *Fuller's Church History*, Bk. xi. cent. 17. App. 20.

(6) 15 *State Trials*, p. 714, and see ante, p. 11, note (15).

(7) See ante, p. 8, note (2); *Spelman's Concilia*, pp. 145, 170.

(8) *Wilkins' Concilia*, vol. iv. p. 353.

and substituting an appeal to the king in Council from the archbishop, there is no mention of an appeal from Convocation, thus shewing that jurisdiction is in the archbishop alone.

Sir W. Phillimore, in reply. The decision on the information of intrusion is that of Lord Keeper Wright only, though Holt and Trevor, C.JJ., were called in: the only point relied on by the Bishop of St. David's was that he was a Peer of Parliament, this report has therefore no weight as an authority.

1889

 READ
 v.
 BISHOP OF
 LINCOLN.

 The Archbishop
 of Canterbury.

Cur. adv. vult.

1889. May 11. THE ARCHBISHOP OF CANTERBURY. Before I proceed to deliver judgment on the protest, I desire to express my very great obligations to the learned and right reverend prelates who are with me, for their goodness in hearing the arguments along with me, and giving me the benefit of their advice on various points. It will be remembered that the appointment of their Lordships as assessors was for the hearing of the case on its merits. The appearance under protest gave rise to a question totally distinct (except on one reserved point) from those affecting the merits, and their Lordships could not be called upon to discharge the office of assessorship, properly speaking, in considering the validity of jurisdiction which potentially affects themselves and their acts. It will therefore be understood that the judgment which I shall presently deliver on that part of the protest which concerns the jurisdiction only, is not to be looked upon as other than my own judgment.

The Court has now to give its decision on the protest raised on behalf of the Lord Bishop of Lincoln against the jurisdiction of the Court in this matter.

First, it will be necessary to consider the case stated in the protest; secondly, the authorities and the arguments against and in support of the archiepiscopal jurisdiction; thirdly, to state the conclusion arrived at, and declare the course to be taken upon the decision.

I. The protest says:—1. That the citation issued does not cite the Lord Bishop of Lincoln to appear in any Court or in any proceedings whereof the laws, canons, and constitutions ecclesiastical of this Church and realm and of the Province of Can-

1889

READ
v.
BISHOP OF
LINCOLN.

The Archbishop
of Canterbury.

terbury take cognizance. 2. That by the said laws, canons, and constitutions, the Lord Bishop of Lincoln is not bound and ought not to appear before or be tried by the archbishop sitting alone, or to appear before or to be tried by the Vicar-General of the archbishop; and that the fact that the archbishop proposes to sit with assessors does not confer a jurisdiction which he would not otherwise have. 3. That by the said laws, canons and constitutions, the Lord Bishop of Lincoln as a bishop of the Province of Canterbury ought not to be tried for the offences (if any) with which he is charged in these proceedings, save by the Archbishop of Canterbury together with the other bishops of the province, his comprovincials, assembled either in the Convocation of the said province or otherwise. 4. That the charges set forth in the citation are not such charges as by the said laws, canons, and constitutions, the said Lord Bishop of Lincoln is bound, or ought to be tried for before or by any Court of ecclesiastical jurisdiction. The consideration of this fourth point was deferred, without prejudice to his Lordship's position, until the case (in the event of the protest being overruled) should come to be heard on its merits. By the first three articles of the protest, two questions are raised: (1) Has the archbishop, either sitting alone or with assessors in the Archiepiscopal Court of his province, jurisdiction? (2) Has the archbishop jurisdiction only when sitting together with the other bishops of the province assembled in convocation "or otherwise"? The word "otherwise" is not explained. But the second question (2) would not require consideration if the first (1) were decided in the affirmative. If it were proved that the archbishop has jurisdiction when sitting in Convocation, this would not in itself prove that he has jurisdiction only when so sitting. It is obvious that such jurisdiction might exist concurrently with a jurisdiction exercised by the archbishop alone or with assessors.

II. The arguments in support of the protest and the authorities cited have extended over a wide range. The records of early synods and councils have been much relied upon. As documents ancient, and solemnly accepted, these records deserve all the scholarship and attention with which they have been handled by the learned counsel. Not for this immediate purpose only, but

for ourselves always and our beliefs, they have the highest value and weight. It is desirable, therefore, to ascertain, if possible, exactly what kind and amount of support the contention receives from their authority. General impressions are easily created even by raising a contention on such grounds, and then conscientious difficulties gather round those impressions. It is therefore quite worth while to examine in some detail the canons cited, but only for the purpose for which they are cited. The argument which was advanced is very clear and connected. The first canon of the Council of Chalcedon received the canons of "all the holy synods" held before it. The English Church receives the Council of Chalcedon as one of the four general councils. All the canons, therefore, of this and of the earlier synods referred to have become and, if the law has not been altered, are still part of the law of the realm. It is agreed, at the same time, that if the directions contained in ancient canons are ever so clear and definite, they still cannot determine any question of canonical or other law in England unless they have been received and put in use. There is, however, no doubt that in matters of faith and doctrine the decrees of the first four general councils have been so received, as declared in the statute law (25 Hen. 8, c. 13, s. 37 ; 1 Eliz. c. 1, s. 36). Canons also therein made, when strictly applicable, and when not "contrariant to the law of the Church and realm," have authority.

We proceed then to consider how far this authority extends in the present case. Extracts in support of the view that the canons determine the method of procedure in trial of bishops were put in by the learned counsel for the Bishop of Lincoln. Among these are two of the canons called apostolic, and other canons of the Councils of Constantinople, Antioch, and Chalcedon. We will take them in order, and consider both their contents and their reception. The canons called apostolic probably belong, in the opinion of the most learned critics, for the most part to a period in which the Crown or Government had entered into no relations with the Church. For this reason, as well as on account of other social changes, many of the most important of these canons nowhere now survive in use, and could nowhere be acted upon in the Catholic Church as it is. Of

1889

READ
v.
BISHOP OF
LINCOLN.

The Archbishop
of Canterbury.

1889

READ

B.

BISHOP OF
LINCOLN.The Archbishop
of Canterbury.

canon 27 (otherwise 33 or 35), the part which has seemed to touch this question is (as cited by the learned counsel)—“The bishops of every province ought to own him who is chief among them, and esteem him as their head, and to do nothing extraordinary (περιττόν) without his consent; but every one those things only which concern his own parish (παροικία) and the country subject to it. Nor let him (that is chief bishop) do anything (extraordinary) without the consent of all.” (1) But (not to discuss the exactness of this translation) if anywhere the chief bishop has a court and jurisdiction, that which he does regularly within this, in the exercise of that jurisdiction, is not extraordinary. The canon assumes that he has some authority more than diocesan; and to allege the canon generally against a jurisdiction not otherwise proved to be outside this is to beg the question. Again canon 66 (otherwise 73 or 74) directs that the bishops shall summon before themselves any credibly accused bishop, and try to secure his appearing, and shall sentence him. But even if this canon were held now to empower bishops to cite one of their own number before them, it still could have no force to override a jurisdiction otherwise shown to reside in their metropolitan.

Next, as to the reception of these canons in our Church. It was argued that the apostolic canons were held to be included among those adopted by the first canon of the general Council of Chalcedon, and therefore received by the Church of England, and so part of our own law. It is, however, matter of history (I refer to Hefele, “Hist. of Councils,” App. vol. i.) that the apostolic canons were adopted by the Synod in Trullo, A.D. 792, under the patriarch John Scholasticus, into the code of the Greek Church. That would not have been necessary if they had been held to have been already adopted by the Council of Chalcedon in A.D. 451. After the Council in Trullo they remained binding on the Greek Church only, until, after having been added to the list of apocryphal books condemned by papal authority in the sixth century (inserted probably by Hormisdas in the Gelasian Decree, Labbe, t. v. c. 390), they regained credit, and the first fifty of them were in the eleventh century added to the orthodox

(1) Johnson, ii. 19.

rules (*regulis orthodoxis*) of the Roman Church. (Hefele, App. vol. i.). It is therefore difficult to see how these two canons, unless they have had some definite reception here, which is not shewn, are not still formally part of "that foreign canon law" as to which Sir W. Phillimore rightly, "as an English lawyer, denied that it could be put into effect." They do not, as we have seen, apply to this case even as to their contents. And if they did, still (precious as they are as illustrations of early Christian practice) they are not part of the discipline of the English Church. We come next to the sixth canon of Constantinople. The reception of this canon is even more questionable. Critics agree that it was not passed at all in the second general council, the Great Council of Constantinople of the year 381, but at the synod which was held there a year later. Four canons only were passed at the council. (Hefele, B. vii. s. 98; Beveridge, Ballerini, etc., App. Hef.) The so-called fifth and sixth were not read apparently at Chalcedon, they are not alluded to by the Greek historians of the council, and were not included in any of the four early Latin versions of its canons, and as late as the year 865, Pope Nicolas the Great writes of this sixth canon to the Emperor Michael at Constantinople, as being "not found among us (in the West), though asserted to be kept among you (in the East)." (Hefele, l. c. and sub can. vi.; Jaffé Regesta P.P.R., sub anno; Nic. I. Ep. 8 ad Michaellem Imp. Proposueram, etc. Labbe, Venet. 1729, v. 9, c. 1321 E.) It was not passed, then, in the Second General Council, there is no evidence that it was sanctioned in the third, and it was not in the code at Rome, nearly two centuries after it has been argued that it was received at Hatfield, and became binding to this day as the law of the English Church. But what is its purport? It excludes heretics, schismatics, and excommunicate persons from bringing ecclesiastical suits against bishops. It excludes ecclesiastical suits against bishops from being instituted in the temporal courts; and from being instituted in general councils (or great synods) except on appeal from the provincial synods which ought to receive and hear such causes. If, then, this canon had been received in England it might probably have been the earliest authority for such jurisdiction in the provincial synod as may

1889

READ

v.

BISHOP OF
LINCOLN.The Archbishop
of Canterbury.

1889

READ

V.
BISHOP OF
LINCOLN.The Archbishop
of Canterbury.

possibly exist in it from some source; although that reception could not have excluded concurrent developments which a more organised period was sure to produce in the modes of jurisdiction. But even that probability is extinguished by the evidence that it was not known in the West until long after the Council of Hatfield. We come, thirdly, to the canons adduced from the Synod of Antioch, which, although it was in reality only an Oriental synod, without any representation of the Western Church, has acquired large authority, apparently, as Hefele thinks, through the goodness of its enactments. Of the ninth canon we need not speak; its point has been touched under the Apostolic Canon 27 (33 or 35), of which it is an expansion—unless that is an abridgment of this. Canons 12 (not 11), 14, 15, deal with cases of bishops who have been tried or deposed by synods. They do not order that bishops should be tried only by synods, but they speak of this as the obvious mode of procedure at that time—which of course it was. But the 13th canon was quoted by Sir W. Phillimore as if it did order that mode distinctly. “All is null,” he read from Johnson, “that is done by bishops coming without invitation” (i.e., intruding foreign bishops), “and they are to be deposed by a sacred synod.” The original will bear no such interpretation. It is “*καθηρημένον ἐντεῦθεν ἤδη ὑπὸ τῆς ἁγίας συνόδου.*” That nearly answers in form to the form of the phrase “ipso facto excommunicated, and not restored until,” etc., in our own canons of 1604; and “the Holy Synod” is that then sitting (compare in Canon 14, “*ἔδοξε τῇ ἁγίᾳ συνόδῳ*”). So the latest historian of the councils takes it (Hefele). So the early Latin translators: Dionysius Exiguus, “Ex hoc jam damnatus a sancto concilio” (Labbe, t. ii. c. 601, Ven.), and Isidorus Mercator, “tanquam depositus a sancta synodo et propter hujus modi præsumptionem jam prædamnatus” (Labbe, t. ii. c. 609). All men were to regard the intruding bishop as ipso facto deposed by his own act. This was the only sense in which the canon could have been accepted or known in the West, and there is no direction at all for the trial of a bishop by a synod. On the contrary, the 11th canon (which was not quoted) gives a distinct indication, at least in certain cases, of another mode of trial. It provides for a bishop, if necessity arose, transferring his cause directly to the

judgment of the Crown (the emperor)—not limiting the kind of cause to civil causes—by permission and with commendatory letters from his metropolitan or comprovincials. Lastly, we come to the General Council of Chalcedon, A.D. 451. I do not understand how the ninth canon can be alleged in support of the contention raised. It is a purely clerical canon, concerned only with disputes and complaints arising among clergy. It places the civil affairs of the clergy, as well as ecclesiastical matters, under the control of the bishops. The highest judicial authority therein named for the greatest causes is the Exarch of the “diocese,” as superior metropolitan, or the “Throne” (Patriarch) of Constantinople. (Hefele, B. xi. s. 200, pp. 107–8, Goshler.) It seems needless to say that such a canon has never been received here. But indeed all the canons of Chalcedon, including the first, were applicable only to the Greek Churches. The Western representatives had departed from the council as soon as questions of faith were over, and long before the canons of discipline were passed. These last were all proposed and passed together in the fifteenth session, and it is held that only the first six sessions, those which dealt with matters of faith, had an œcumenical character. To sum up the result of this closer examination of the antient canons alleged in support of the protest, it amounts to this: The trial of bishops by synods is not enacted in them, though this is implied in the English version which was cited of one of the canons of Antioch. Such trial is treated as a usual and obvious function of synods. But deposition in other form, and trial in other form, and before the metropolitan or the patriarch is already recognised. The conclusion which the Court must draw is that it cannot satisfy itself from the evidence alleged that the authority of early Church councils establishes that the trial of a bishop ought to rest with a synod of bishops only. It is not necessary to repeat what has been observed as to the absence or slightness of the evidence for the reception in the Western Church of the particular canons alleged. The learned counsel argued that all were covered by the first canon of Chalcedon, and although that might be true for the Greek Church, yet the disciplinary canons of that council have never been conceived to have œcumenical authority. I have thought it

1889

READ
v.
BISHOP OF
LINCOLN.

The Archbishop
of Canterbury.

1889

READ

P.

BISHOP OF
LINCOLN.The Archbishop
of Canterbury.

important to enter minutely into this part of the argument because, when it has been elaborately maintained that the primitive councils alleged command a mode of trial inconsistent with that in use and now proceeding, even if the jurisdiction of the Court be established, a certain prejudice is evoked, which, under present circumstances, it is right to dispel. The Court itself, owing to the character of the protest, has been placed on its defence, as it were, in a singular manner, which would not have been the case had these pleadings been advanced elsewhere. It will be understood that nothing here said impugns the authority of the first four General Councils—"the first perfection," as Hooker calls them, "of so gracious a thing." But their work was twofold, and it is necessary to observe the distinction between the two parts. Their symbols or creeds, their articles of faith, and definitions of doctrine are our rule, as a faithful expression of the sense of Holy Scripture on the great verities. Thus, in the case referred to by Sir Walter Phillimore of *Kemp v. Wickes* (1), the authority assigned to the four councils seems limited to matters of faith and doctrine. But the canons of order and discipline passed in those same councils and at less important synods as to matters of ecclesiastical procedure and legal practice are on another footing. The creeds and sacred definitions deal with things eternal. The canons and the discipline deal with things of spiritual concernment, but in temporal regions and for temporary uses. The canons themselves take into account the conditions of their own times and countries. So must the ecclesiastical procedure of every age and nation. The procedure and practice of Courts must of necessity vary with the constitution of a country, and the institutions, organizations, and usages of communities, both ecclesiastical and civil. These have been in perpetual movement and life, and those canons as they stand do not now answer to the actual practice of any Christian Church. That is no disparagement of their excellence. They do not claim to bind a scheme of judicature on the Church at large or the Church of ages. They will not bear the strain which this contention puts on them. But whatever system of procedure appears in those canons, it has

(1) 3 Phill. 276.

1889

 READ
 v.
 BISHOP OF
 LINCOLN.

 The Archbishop
 of Canterbury.

been argued that the canons form part of the law of the land, inasmuch as they have been accepted in terms by synods of the English Church. Reference was made to the Council of Hatfield, the Synods of the Northern and Southern Provinces in 787, and to the canons of Ælfric. (1) 1. The Council of Hatfield, A.D. 680. The conclusions of the Council of Hatfield (whatever be its authority) had reference, so far as we can ascertain, to nothing but matters of faith and doctrine, unless there was some re-arrangement of English dioceses. It was called by the archbishop "in order" (as Dr. Bright accurately says) "to certify the pope as to the orthodoxy of the Church under his rule." (2) Along with other dogmatic declarations it "enforced," he says, "the theology of the five Œcumenical Councils which had then been holden." Its members describe themselves as "we who with Theodore have expounded the Catholic faith." (3) Phrases describing as the one object of their assembly the affirmation of "the right and orthodox faith," "the divinely inspired doctrine," abound in their synodal letter and in Bede's narrative. It is said that Agatho had proposed that it should also examine "de ecclesiasticis statutis" (p. 133), but there is not one word as to the reception of any disciplinary canons, or discipline at all; and this is the more remarkable if there were any theories as to the trial of bishops, because a commissary from the pope attended the council, and at this very moment one of themselves, the great Wilfrid, was at Rome complaining that he had been improperly deprived. The learned counsel next cited the Synods of the North and South, or, as we might call them, the Double Synod of Finchale and Chelsea held in 787 A.D. under the papal legates. (4) These deal with Church order very closely—regulating monasteries, judicial proceedings, marriage, churches, services, &c. They order that any bishop in any way concerned in the death of a king shall be deposed and degraded. But they do not touch the process. They receive the "synodal edicts of the six universal councils (the sixth having now been held), together with the decrees of the Roman pontiffs." We have

(1) Haddan & Stubbs, iii. pp. 135, 153.

(2) Early Eng. Ch. Hist., p. 317.

(3) Haddan & Stubbs, vol. iii. p. 141.

(4) Haddan & Stubbs, vol. iii. p.

1889
 READ
 BY
 THE
 BISHOP OF
 LINCOLN.
 —
 The Archbishop
 of Canterbury.

already examined the original bearing upon the present question of the canons of the Four Councils which we receive, and the two synods neither add new force to them, nor interpret them as interfering with that spiritual jurisdiction already exercised in England. It has been already observed that some of those canons were at this date not received in the West. The other quoted example of synods of the English Church "having so accepted in terms" those canons, that they now "form part of the law of the land," was the canons of Ælfric, A.D. 970. (1) I suppose the contention was serious. But in fact the Canons of Ælfric represent no synod or legislative authority. They are a bishop's charge. A charge written for the use of the Bishop of Dorchester, by Ælfric, his "humilis frater." And there is no more to say about them. There is, therefore, no evidence that the early English synods either formally received or enjoined any special form of procedure in the trial of bishops.

If we examine the early English illustrative instances they bear not only the same negative witness as the documents, but witness which contradicts the contention. The first alleged was that of Winfred of Lichfield. (2) The Anglo-Saxon Chronicle was quoted to prove that he was deprived by a synod, contrary to the nearly contemporary statement of Bede (Bede was twenty years old when Theodore died), that he was deprived by the Archbishop Theodore (Bede, H. E., l. iv. c. 6). If the passage had been genuine the chronicle itself belongs to two centuries after the event. But the passage is no part of the original Chronicle. The translation may take no notice of the fact, but the critical edition of the original shews the passage to be a late interpolation—mixed with a spurious charter and probably of the twelfth century. In the second instance, that of Wilfrid of Yorke, we have, against all conjectures about synodical action, Wilfrid's own written petition to the pope, given in his own words by his friend and biographer. Wilfrid says that he had been deprived (*privatum*) by Theodore (of whom he speaks with great veneration), "*absque consensu cujuslibet episcopi*." It was urged that Wilfrid was "given his place in a synod assembled in Rome,"

(1) Wilkins' *Concilia*, vol. i. p. 250; (2) *Rolls' Edition*, vol. i. p. 53;
Johnson's English Canons, pt. i. p. 382. vol. ii. p. 29.

and that, "before he had been ultimately restored he was (thus) recognised by the Pope as a lawful bishop," that is, that Theodore's deprivation of him was not recognised. But the facts are these. Besides the synod in which his appeal was heard, there were two synods at Rome while Wilfrid was there (1); the one in which Wilfrid sate as a bishop was after his restoration; in the synod which was held while he was still under the archiepiscopal sentence he was not present, although its special business was the state of the Church of England, without reference to his own difficulties. Yet more, the Bishop of Toul, who was Wilfrid's travelling companion to Rome, did sit in that synod. So far, therefore, the action of the pope involves a recognition of Theodore's jurisdiction. Lastly, in the sentence of restoration not a doubt is thrown on Theodore's jurisdiction. Wilfrid had asked for a decision as to whether he was "*privatus*" (p. 138). The sentence was, "*Episcopatum, quem nuper habuit, recipiat.*" The partitioning of Wilfred's diocese into three, which Theodore had carried in council with the king, was affirmed, though the persons appointed to them were to be changed. As the climax of the conduct for which Wilfrid was deprived was his threatening to appeal to Rome, he receives from the pope much commendation for his dutifulness, but he is replaced only in the diminished see. The legendary story of Wulfstan, who was not deprived, and was not tried in any way which could be called synodical, seems to have no bearing on the question except as shewing by what authority Anglo-Saxon and Norman bishops believed that they held their sees (Freeman's Norman Conquest. (2)) The Court has considered also the other instances up to the end of the twelfth century, but they only shew what is unquestioned, and continues to appear, that there was more than one way in which episcopal causes were heard. With respect to the complaint against Becket for suspending the Bishop of Salisbury, it should be observed that it is not rested upon the use or abuse of legatine power, since the complaint is of his acting "*absque (episcoporum) consilio,*" or, as they state it themselves, "*priusquam causa comprovincialium aut aliquorum etiam fuisset arbitrio comprobata.*" It is exactly the same ground as

1889

READ
v.
BISHOP OF
LINCOLN.

The Archbishop
of Canterbury.

(1) Haddan & Stubbs, vol. iii. pp. 131, 136.

(2) Vol. iv. p. 379.

1889

READ
v.
BISHOP OF
LINCOLN.

The Archbishop
of Canterbury.

Wilfrid alleged against Theodore, and it has not even been argued that the objection was entertained (Materials for Hist. of Becket. (1)) After reviewing the earliest evidence, the canons, their reception elsewhere, their reception in England, the instances of jurisdiction, the Court fails to satisfy itself that up to that date there was an exclusive jurisdiction over these cases in a synod of bishops. Before we leave this division of the subject, the three passages should be noticed which were cited to prove that the antient canons have parliamentary authority as law in England. The first (25 Hen. 8, c. 19, s. 7), simply continues the authority whatever it was which the canons already possessed. The second (1 Eliz. c. 1, s. 36), relates to the Four Councils only as ruling what was heresy, when they rested on Scripture. Also it has long disappeared from our Statute-book. The third was found in an Exhortation in the Ordinal, where there is a reference to "antient canons" which echo the Scripture precept "not to be hasty in laying on of hands." It was said that the reference is to the second and eighth Apostolic Canons. I do not see the resemblance; but the allusion is undoubtedly to the Fourth Council of Carthage, which is actually referred to by name in one of the old Latin Pontificals in the corresponding exhortation (Martene, Ant. Ecc. Rit. vol. ii. p. 386). It will scarcely be argued that the canon of the Fourth Council of Carthage became English law through that quotation, but if it would not neither would the others. This is all the parliamentary authority advanced.

But it was argued that English usage shews that at a later time, "The true mode of judging a bishop is not by the archbishop alone, but by Convocation, Council, or Synod, whatever phrase you choose to employ." It had before been put to the Court (and no exception is taken to the statement), that Convocation is a provincial synod or council, and as such has certain judicial functions. Therefore we proceed at once to the consideration of the cases which have been cited as distinct incontrovertible examples of trials of bishops by Convocation. The first case, urged as a forcible proof that the jurisdiction of the archbishop over bishops must be exercised in Convocation is that of

the Coadjutor of Hereford in 1393. He was summoned to trial by the archbishop with high assertion (it is said) of his judicial authority, but summoned before Convocation and tried there. It is, however, a case of no importance. The Coadjutor of Hereford was not a bishop; and he was a member of Convocation. He was cited to appear before the archbishop at the next Convocation, which he was bound to attend. It is not pretended that the archbishop might not have corrected him by his visitorial power and in other ways, and it is not to be imagined that a Court such as the present would be convened to decide a case of negligence in a presbyter who was commissary to his sick bishop. Many cases found their way, as this did, to Convocation to meet the convenience or feeling of the bishop. Gibson writes thus: "If a bishop in his diocesan Court upon examination did not see cause to deliver over the party accused to the secular power, either the degree or evidence of the crime falling short . . . the person was frequently brought before Convocation." (1) The reluctance of the bishops to hand over the person to the secular arm, and the odium aroused when they did so, are visible through the whole fourteenth century. Convocation did no more in the way of inflicting penalties than the bishop himself could have done if he had chosen. The Calendar of Authenticated Trials for Heresy prior to the year 1533 (2) shews how many cases of this class, in which the process was initiated in Courts of bishops and of the archbishop, came thus before Convocation. The coadjutor's case is one of discipline taking the same course. It has no relation to trials of bishops. The second case is that of *Bishop Cheney*, (3) in 1571. But the *Case of Bishop Cheney* is no trial by synod. It is a mere case of wilful contumacy in and against Convocation. At the opening of every Convocation it is declared that all members who are absent without necessary and approved reason will be visited as contumacious with the canonical penalty; "intendimus . . . contumacias eorum qui absentes fuerint canonice punire." The canonical penalty is the "Major Excommunication" (4): and there is an instance of many

1889

READ
v.
BISHOP OF
LINCOLN.

The Archbishop
of Canterbury.

(1) Synodus Anglicana, ch. xiv.
p. 169.

(3) Strype's Parker, vol. ii. p. 52.

(4) Gibson's Synodus Anglicana,

(2) 2nd Appendix Ecc. Courts
Comm. Report. pp. 27, 26.

1889

READ
 v.
 BISHOP OF
 LINCOLN.
 The Archbishop
 of Canterbury.

members being suspended for such contumacy by Archbishop Whitgift, "a celebratione divinorum et omnimodo exercitio ecclesiasticæ jurisdictionis" in 1586. (1) Bishop Cheney avoided signing the Thirty-nine Articles for nine years, from 1562 to 1571 (being "popishly affected"); and wilfully absenting himself from the Convocation which was to sign them (before publication) in the latter year, was excommunicated for contumacy and contempt according to the forms of Convocation (see Strype's Parker. (2)) The suspension of *Bishop Goodman*, (3) in 1640 is equally destitute of any appearance of a trial by synod. It was an act, and an arbitrary and oppressive act, of the President and Houses of Convocation. The account is minutely given in the acts of Convocation for that year. (See Gibson's App., pp. 51 ff.). The signing of the draft canons of 1640 having been fixed for May 29, Bishop Goodman alone of the two Houses refused to sign. Three canonical monitions to him to sign were compressed into the time occupied by the rest in signing. He still refused. The archbishop then not only pronounced (decrevit) that he should be deprived, but ordered his official principal to draft the sentence of deprivation. He then took the sense of the House, which, as well as his own voice, was necessary to the validity of the act. In Convocation of course all bishops are "assistentes," and all have votes. The majority, which was all that was required, was seen to be for deprivation; and Goodman signed. The archbishop then required him to declare whether he signed "voluntarily, ex animo, without equivocation, evasion, or mental reservation." Goodman replied that he had signed and would say no more. Nevertheless, both Houses pursued the case, and both resolved that now he should be suspended from office and benefice for the "scandal" he had caused. Further, the Lower House petitioned the archbishop that he should be called upon to take a new oath required by the new canon just signed, which had not yet received the Royal assent, and to answer the question which had been put to him. He was ordered not to leave London (Westminster?) until he had taken the oath, and the archbishop then suspended him

(1) Gibson's Appendix, p. 163.

(2) Vol. i. p. 51 ff, and Appendix.

(3) See note (1), p. 6.

(cum consensu totius Synodi . . . suspendendum fore decrevit). This all took place in one day and in one sitting. Thus the two instances supposed to establish the trial of bishops before Convocation are, in fact : (1) one of them, a mere putting in execution of the canonical penalty for the enforcement of attendance ; (2) the other, in form simply an act of Convocation. It was argued that the voting of the bishops in Bishop Cheney's and Bishop Goodman's cases shewed that they were judicial proceedings. But this is an error ; a majority would be necessary in any act of Convocation. The Royal assent to any Act requires the "greater number of the bishops whereof the president to be one." But "in trials before Convocation the members do not vote" (evidence of Dr. Stubbs, Bishop of Oxford, in Ecclesiastical Courts Commission Report, question 1155). The same great historical authority writes (App. (1) to report already referred to, p. 45), "before the Reformation the Provincial Convocation may be fairly regarded as a court attendant on and assessing to the archbishop, discussing cases of litigation or correction which were brought before him therein or were laid by him before his clergy. But we are inclined to believe that so far as jurisdiction was concerned the authority resided in the metropolitan and not in the synod." This passage perhaps may seem to illustrate how the function of Convocation as assessors to the archbishop in the exercise of his jurisdiction may be discharged by certain members of the body. Further, in claiming Convocation (regarded as the Provincial Synod) as the proper Court for the trial of a bishop it was not explained how the necessity for the concurrence of a majority of the Lower House, which is required for the validity of the acts of Convocation, is consistent with the supposed requirements of antient councils that a bishop should be tried by comprovincials only. However, it is not necessary at present to go further into the question. It may also be observed that from the year 1551 to 1662 no authority was likely to be producible bearing either way upon the right of the archbishop, whether in his own court, or in synod, or Convocation, to try a suffragan, for as long as the Court of High Commission lasted all important offenders in causes touching doctrine or ritual were brought before it, as well as

1889

READ

v.

BISHOP OF
LINCOLN.The Archbishop
of Canterbury.

1889

READ

C.

BISHOP OF
LINCOLN.The Archbishop
of Canterbury.

persons, whether laity or clergy, accused of immorality or misconduct, recusancy or nonconformity (Hist. App. (1), p. 50). Lastly, while in the beginning of the seventeenth century the opinion of the judges in *Whiston's Case*, given with the reservation that upon argument they might alter their view, is in support of some judicial power in Convocation, it remains uncertain whether they intended that it could be exercised against persons or only against doctrines as in books, and it is in no way adverse to a jurisdiction residing elsewhere as in the metropolitan. (1) The Court therefore holds that while Convocation is a Court of which the president "sedet judicialiter" with the bishop's "assistentes," and while there may be causes, processes, or controversies which would be necessarily and usefully heard and determined there (proper conditions being fulfilled), it has not been established that it is the only proper Court for the trial of a bishop, and no instance of such a trial has been adduced.

It now remains to consider the arguments on the jurisdiction of the metropolitan. The antient canons themselves, within even the seventy years from Constantinople to Chalcedon, shew the tendency towards that centralization which was impossible before the Church emerged from isolation and oppression, and from the first traces of this there appears all through a jurisdiction vesting in and exercised by the metropolitan, sometimes with, sometimes only in a synod, and sometimes separately. Thus we observed that as early as A.D. 451 the highest trials between bishops are to be taken before either the Exarch of the diocesis or the Archbishop of Constantinople. And thus we find still earlier among a small number of bishops who assembled in a counter-synod at Ephesus in A.D. 441 some bishops who "many years before had been deposed for grave causes by their own metropolitans—*πρὸ πολλῶν ἐτῶν ἐπὶ δειναῖς αἰτίαις καθηρημένοι ἀπὸ τῶν ἰδίων μητροπολιτῶν*" ("Epist. Synod Conc. Eph. ad Cœlestinum," Labbe, Paris, v. iii. p. 364). In England some of the early synods which tried bishops were not synods of bishops or clergy exclusively, and up to the end of the twelfth century sentences pronounced by the archbishop alone, in the exercise of this jurisdiction, are sometimes appealed or protested against to king or

(1) Broderick & Freemantle, pp. 325, 326.

to pope, but never set aside (if set aside at all) on the ground that he had no such jurisdiction. It is scarcely necessary to enter upon the question of the legatine jurisdiction, since no cases are alleged as examples of its being employed in trials of this kind. But as it has been suggested that the archbishop might have had powers as *legatus natus* which he had not as metropolitan, I may refer to the opinion of one of the most competent authorities of our own or other times. The acceptance of the legatine commission by the archbishops "is of less constitutional importance than might at first sight seem probable." . . . (Its) "effect was not the creation of new legatine Courts, but the clothing of the ordinary Courts with some shadow of legatine authority." "England resisted the intrusion of foreign legates, sent from time to time to . . . supersede the action of the metropolitans. . . . Not only the kings, but archbishops like Anselm, remonstrated against the aggression. According to Anselm, the archbishops of Canterbury, by the law and custom of the Church, possessed all the rights and powers that were by the delegation of the pope's powers bestowed upon the legates—a statement which, interpreted by history, means that they were customarily free and independent of foreign interference in the administration of their province." "But the practical decision of the investiture controversy . . . seems to have impressed the English bishops with the belief that it was better to seek for themselves the office of legate than to leave the Church open to arbitrary and mischievous interference from without" (Bishop of Oxford, *Historical Appendix* (1) II. to *Report of Commission on Ecclesiastical Courts*, 1883, p. 25). Against the continuous positive evidence of jurisdiction in the archbishop, the letters and extracts put in "On the Powers of the Archbishop," offer at the best, and merely by implication, negative evidence. The authorities from the Year-books do not seem to establish the point for which they are cited. The petition to Edward III. and the reply refer entirely to criminal offences, and are now contrary to the law of the realm. The case of Bishop Pecocke, A.D. 1457, requires to be considered by itself. It offers an example of the difficulties sometimes attending even written contemporary notices by competent persons. These notices, with such other documents as exist, and some later accounts have been

1889

READ

v.
BISHOP OF
LINCOLN.

The Archbishop
of Canterbury.

1889

READ
 e.
 BISHOP OF
 LINCOLN.

The Archbishop
 of Canterbury.

examined by many scholars. Still, it remains uncertain whether Pecocke was deprived, or, after appealing to the pope, resigned on promise of a pension from the king. Further, there is a double mode of procedure. After withdrawing from the king's council at Westminster under pressure (which seems something like the waiving of privilege in *Watson's Case*), Pecocke appeared at Lambeth, where the archbishop sate with three bishops described as assessors—Waynflete, Bishop of Winchester; Chedworth, Bishop of Lincoln, and Lowe, Bishop of Rochester—received the books which Pecocke submitted, and delivered them to twenty-four examiners; received their report; condemned six articles which were said to be extracted from the books; caused the condemnation of these to be published at Paul's Cross, and subsequently received Pecocke's formal retraction. All this, which is not a mere reporting on the subject but is judicial, is combined with other proceedings in the King's Council at Westminster, where still Pecocke is said by Whethamstede, "*citari coram archiepiscopo*;" and there "*præsente tam Domino Rege quam multis proceribus*," the archbishop gave him his choice between abjuration and death. Whethamstede's observation is that "*reformavit (eum) archipræsularis auctoritas*." This combination leaves the action of the jurisdictions which were employed to secure the suppression of Pecocke ambiguous. It should be further observed that, this trial taking place in A.D. 1457, the archbishops of Canterbury had held five trials for heresy since the year 1410, sitting with episcopal assessors. In two cases there were also assessors who were not bishops (*Calendar of Trials for Heresy*, ut sup.). And though in the instruments belonging to the Process (*Gascoigne*) by which Pecocke was tried the archbishop has the usual style of *legatus*, there is no token that anything was done by virtue of legatine power. Neither is there any allusion throughout the records to Convocation.

Mr. Jeune has urged in evidence of the plea of the non-existence of the jurisdiction under consideration that Archbishop Parker takes no notice of it in the account which he gives of the privileges and prerogatives of the See of Canterbury in his *De Antiquitate Ecclesiæ Britannicæ* (p. 37, ed. Drake), whilst he gives a minute description of the Courts of Arches, audience and

prerogative in testamentary, matrimonial, and other causes, as well as of the peculiar (p. 41) jurisdiction of the see. But here, in fact, lies the explanation. He gives an exact statement of the scope and practice, the officers, and the advocates of courts which were in daily request—"tam late patentis jurisdictionis," as he writes. There was no occasion for him to go into details upon a jurisdiction which, however real and necessary, had not been exercised for more than a century. But he does indicate clearly that there was a wider range of jurisdiction than he actually describes. He not only says that it was the business of the archbishop "*provincialia cuncta negotia arbitrio suo moderari et temperare*" (p. 43); he goes much farther, and too far. He writes (p. 37): "*Archiepiscopi Cantuariensis autoritas non certis atque definitis archiepiscopalis aut metropolitice jurisdictionis cancellis concluditur, sed ordinaria. libera, pæneque arbitraria per suam provinciam excurrit et diffunditur.*" It is impossible to conclude that, when such is his language, Parker excluded suffragan jurisdiction by mere silence when giving the particulars of his every-day courts; and especially while he was at the same time revising the *Reformatio Legum*. It is unreasonable to suppose that jurisdiction in the case of an accused suffragan was excluded from terms so large; inasmuch as otherwise, large as they are, the most important case of all would be unprovided for, since Convocation had never dealt with or been invoked in such a case. But the *Reformatio Legum* shews that where it was necessary to codify, Parker and his colleagues expressed themselves in plain terms. That code, begun in 1549, was "carefully framed by Archbishop Cranmer (Strype's Parker, ii. 62) and the committee, which consisted of thirty-two most eminent bishops, divines, civilians, and common lawyers." After abundant labour spent on it, "the whole code as revised and approved by Archbishop Parker," who had been a member of the committee from first to last, "was made public with the archbishop's consent in (1571) the same year in which the Thirty-nine Articles were signed by Convocation and ratified by Parliament" (Cardwell, pref. to R. L. (1)). It is hardly necessary to remark that it is cited here simply in evidence, not

1889

READ

v.

BISHOP OF
LINCOLN.The Archbishop
of Canterbury.

1889
 READ
 c.
 BISHOP OF
 LINCOLN.
 —
 The Archbishop
 of Canterbury.

as constitutional authority. Under title *De Ecclesia*, &c. c. 16, after provision for appeals to the archbishop and for his adjudicating on questions between his comprovincials—"Judex et finitor inter eos esto archiepiscopus"—the article proceeds thus:—"Further, he shall hear and judge accusations against the bishops of his own province." "*Ad hæc audiet et judicabit accusationes contra episcopos suæ provincie.*" A more definite direction cannot be conceived, nor a clearer testimony to the settled opinion of Parker at the very time when it is urged that the *De Antiquitate* shewed he never thought of such a jurisdiction. The *Reformatio Legum* was published complete in 1571, and the *De Antiquitate* in 1572. I should add that in title *De Deprivatione*, c. 4 (Cardwell (1)), it is ordered that, if a bishop is in peril of being deprived for any crime, the archbishop, with two bishops named by the Crown, are to take up the cognizance of the affair. But before we part from the evidence which Parker thus bears to the range and application of the jurisdiction, it is desirable to notice how in his magnifying of the office one point which he wishes to make clear is that along with it the Metropolitan See had received the fullest possible rights of dispensation (*De Ant.* (2)). The wording of the passage, "*totum illud legum rigorem mitigandi jus, quod dispensare dicitur,*" seems to shew that, in Parker's view, the duty of tolerance was the complement of power. A letter from Parker to Sir William Cecil of April 28, 1566 (Correspond. Parker, L. ccxxv. Par. Soc. (3)), was alleged as shewing the archbishop's own sense that he had no jurisdiction as to suffragans. But read in its connection with the history, that letter is not concerned with jurisdiction, but with the impossibility of enforcing obedience so long as the queen was unwilling to give the help of her Council. Such being the jurisdiction, there is therefore no difficulty as to the canons of 1604. The ground taken by Sir W. Phillimore was that, affirming recent canons made from 1580 onwards, by which the archbishop, first alone and then with an assessor, formed a tribunal, they created a new court expressly for the suspension of bishops. The argument was that this proves that

(1) Page 166.

(2) Page 37.

(3) Page 280.

previously the archbishop's was not a court capable of such act of suspension. But it was not the court that was new, but the penalty. Previously it was part of the common law of the Church that a man should not be ordained without a title, unless the bishop was prepared to maintain him; nor without examination of his qualifications and character (see Phillimore, Eccl. Law (1)). But there had been no penalty under previous enactments, and the scandals are well known which were brought about through neglect of the rule. Accordingly the 33rd and 35th canons of 1604 fix penalties, as the enactments of 1580, 1585, 1597, had done (though shortening the term in one case) in the form of suspension by the archbishop from conferring holy orders. They give to the archbishop (as the court has to be named), according to apparently unbroken precedent, the benefit of assessorship, but only one assessor, since cases so simply proved required no more. In the 36th canon, where the question was mere matter of fact as to whether the candidate had subscribed the three articles, it is simply stated that the bishop who had not required him to do so shall be suspended, without even naming the authority by whom. We must here observe that if Convocation, or the archbishop in Convocation, had really been the proper and usual court for the suspension of a bishop, this could not have failed to be asserted in canons made by the Convocation itself. It is not necessary to examine the general language cited from authors, or from practice books, although they do not all point one way, nor to refer to such great canonists as Thomassin or Beveridge, who were not cited, because no opinions of the kind can affect the grounds which are before us as fully or more fully than before the writers. The great specific learning and ecclesiastical science of Antonio de Dominis, Archbishop of Spalatro, and Dean of Windsor, even if of his numerous proofs all may not be equally valid, cannot be lightly set aside. His conclusion, after elaborate research and argument, is that the metropolitan "*ordinariam jam habere in episcopos suæ provinciæ potestatem*," or otherwise that he is "*ordinarius admonitor corrector et iudex adversus suorum suffraganeorum vel negligentiam vel excessus*." The "ordinary power," which

1889

READ

v.
BISHOP OF
LINCOLN.The Archbishop
of Canterbury.

1880

 READ
 v.
 BISHOP OF
 LINCOLN.

 The Archbishop
 of Canterbury.

was supposed to have been diminished by an Act of Charles I., was restored with certain savings by the Act of 13 Car. 2, c. 12. When Archbishop Sheldon's letter in 1676 is quoted with a view to shew that in his judgment this particular judicial power did not reside in the archbishop because he makes no mention of it, it can scarcely have been observed that neither does he mention the Court of his Vicar-General, nor the Court of Arches, nor the Court of Audience, nor yet that judicial power which it is argued that the archbishop had in synod, Convocation, or other. If Archbishop Sheldon's silence as to the judicial power now under discussion means that it did not exist, then neither did any of the others exist, not even the power in Convocation which is contended for in the protest. Why he omits the formal mention by name of these judicial functions I do not know (perhaps because of the detail necessary to discriminate them), but it is observable that he does say very distinctly that the archbishop "episcoporum in regimine episcopali errata et negligentias corrigit." This cannot have been done without some kind of Court, not proprio motu, or arbitrarily. And Sheldon is not speaking of the visitorial power throughout the province. He deals with that some lines lower down. The case of *Bishop Wood of Lichfield* (1684) tells but little. It was an arrangement. Two suits about dilapidations (in one of which he was plaintiff, in the other the archbishop's office was promoted against him), and a third, brought against him for non-residence, were, by consent, referred to the arbitration of two bishops. The arbitration was allowed and the award confirmed by the Court of Arches, and the sentence, part of which was suspension, was formally pronounced by the archbishop in Lambeth Chapel, a bishop of the province and another bishop (not the arbitrators) being present. In two other cases the learned counsel argued that the resort to special commissions by royal authority shewed that trial before the archbishop was not recognised as a possible course—the cases of *Bishop Compton* and of *Bishop Hacket*. With regard to *Bishop Compton's Case* (1686) it is obvious that James II., intending him to be not only tried but condemned, had no other resource than an ecclesiastical commission. It was hopeless to expect that Archbishop Sancroft would himself execute the

king's purpose. There was this further gain in a commission—that, in the absence of the archbishop, it would be presided over (as was the case) by Lord Chancellor Jeffries. In the case of *Bishop Hacket, of Down and Connor*, 1693, we need not resort to the fact that the Bill of Rights did not then run in Ireland in order to explain why it was heard by a commission from the Crown and not by the archbishop. The archbishop, Primate Boyle of Armagh, was incapacitated from the performance of public functions. He had taken no part for ten years past even in consecrating bishops for his own province, though six consecrations took place between 1683, when he officiated for the last time (see *Records of Consecration of Irish Bishops*, supplement to *Irish Ecclesiastical Gazette*, 1866), and 1702, when he died, at the age of ninety-three, “his memory gone, deaf, and almost blind, a mere wreck of the past” (Abbey, “Eng. Church,” vol. ii. p. 315). Up to this point, then, no precedent has been found to shew that, either by canon, statute, or usage, Convocation or any synod in the realm has exclusive jurisdiction ousting the jurisdiction of the archbishop to try a bishop of his province. On the other hand, frequent indications and mention, and examples, both indirect and direct, of the exercise from time to time of the archbishop's jurisdiction are found continuously from the earliest times. And when the issue definitely appeared in the case *Lucy v. Bishop of St. David's*, the validity of the jurisdiction was distinctly affirmed, and has been accepted ever since. The suit was promoted ex officio before the archbishop, who held his Court in Lambeth Palace, with his Vicar-General, assisted on each occasion by several of the five bishops who were his assessors. Upon proof being offered, and several witnesses examined on each side, the bishop tendered a protest on the suggestion that matters contained in the articles were of a temporal character. The archbishop overruled the protest. The bishop appealed to the Court of delegates. The appeal when it came on was heard by five peers, five bishops, five common law judges, the judge of the Admiralty Court, and four other doctors. They dismissed the appeal. But pending the appeal, the bishop moved for a prohibition, and Sir B. Shower argued for it, “That it does not appear that the Bishop of St. David's was cited to appear in any Court

1889

READ
v.
BISHOP OF
LINCOLN.

The Archbishop
of Canterbury.

1889

READ

BISHOP OF
LINCOLN.The Archbishop
of Canterbury.

whereof the law takes notice, for the citation is that he should appear before the Archbishop of Canterbury, or his Vicar-General, in the hall of Lambeth-house, which is not any Court whereof the law takes notice. For the archbishop has the same power over his suffragan bishops as every bishop has over the clergy of his diocese, but no bishop can cite the clergy before himself, but in his Court, and therefore the citation ought to have been in the Arches, or in some other court of the archbishop." (1) The argument may in form not be the same, but in substance is identical with the first ground of protest on behalf of the Lord Bishop of Lincoln. No doubt other grounds were shewn in the *Bishop of St. David's Case* (2), but the prohibition was denied, on all except one article, as to the abuse of a charity. The whole Court held that "the citation was good," and "that as to that which relates to the office of a bishop, the spiritual Court may proceed against him to deprive him." Against sentence of deprivation the bishop appealed a second time to King's Bench for a prohibition; to the Lords for leave to resume his privilege; and a second time to the delegates. The King's Bench, in refusing the prohibition, declared itself with reference to the case "fully satisfied that the archbishop had jurisdiction," that "by the common law he hath metropolitical jurisdiction," and hath "power to deprive." The bishop brought a writ of error before the House of Lords on the refusal of the prohibition by King's Bench. It was not received. In the House of Lords, counsel for both sides and the Attorney-General for the Crown were ordered to be heard before the judges. The question of jurisdiction was fully argued, and the ten judges were unanimous for it. The Lords did not pronounce on that specific point, but refused leave to resume privilege. The delegates (an equally strong Court as before, indeed almost the same) were unanimously of opinion (Rothery) that the archbishop had jurisdiction, confirmed the decree of the archbishop, and remitted the cause to him. After that Bishop Watson retained lands of the see, and the palace. Two informations of intrusion were exhibited before the Court of Exchequer which turned on the lawfulness of the deprivation. Judgment was given against him on both. On the former he appealed to

(1) 1 Lord Raym. 447. App. 27.

(2) See ante, p. 9, note (1).

the Exchequer Chamber and judgment was confirmed ; on the second to the House of Lords, but did not proceed with his writ of error. Thus by the delegates twice, in the King's Bench twice, in the Court of Exchequer twice, by the Exchequer Chamber, and by the House of Lords twice, judgments were given which in some instances directly, and in others by necessary implication, bore witness to the metropolitan jurisdiction now questioned. A consensus of jurisdictions affirmed and reaffirmed it. The case of *Lucy v. Bishop of St. David's* (1) is referred to in Ayliffe's Parergon (2), Roger's Ecclesiastical Law (3), Stephens' Law of the Clergy (4), Phillimore, Ecclesiastical Law (5), Cripps's Law of the Church (6), and by Lord Denman in *Dean of York's Case*. (7) No doubt is thrown on the decisions by any of these authorities. Two new objections are, however, now raised to the authority of the *St. Bishop of David's Case* (1) as a precedent. The one is personal to Lord Chief Justice Holt, and need not be considered. The other is that the absolute appearance to the citation in the first instance was a bar to the bishop's raising the question of jurisdiction subsequently. The Bishop of St. David's and his advisers were not likely to miss this point if it could have been taken before the archbishop with any reasonable hope of success. Sir B. Shower would not have argued the question of jurisdiction if he had thought that the bishop's absolute appearance in the Ecclesiastical Court made such contention useless in moving for the prohibition. Mr. Lucy's counsel would simply have answered Sir B. Shower that the objection was taken too late. The distinction stated by Dr. Tristram is on principle sound. Where the matter is one of form appearance will waive the objection, but where the matter is one of substance, such as jurisdiction in criminal suits, the objection may be taken at any time. "Prohibition may be granted at any time to restrain a Court to intermeddle with, or execute, a thing which by law they ought not to hold plea of And the King's Court may lawfully prohibit

1889

 READ
 v.
 BISHOP OF
 LINCOLN.

 The Archbishop
 of Canterbury.

(1) See ante, p. 9, note (1).

(2) Page 92.

(3) Page 107.

(4) Page 907.

(5) Pages 1235, 1359.

(6) Page 97.

(7) 2 Q. B. 1.

1889
 READ
 C.
 BISHOP OF
 LINCOLN.
 The Archbishop
 of Canterbury.

as well after judgment and execution as before.” (Answer of the judges, *Articuli Cleri*, Coke 2d Instit. p. 602.) “Where it appears that the matter was not within the jurisdiction of the spiritual Court, a prohibition lies after sentence or before.” Comyns’ Dig. tit. Prohibition, D. And same title, F, “where the Court has no jurisdiction a prohibition may be granted upon the request of a stranger, as well as the defendant himself.” Compare *Taylor v. Morley* (1); *Roberts v. Humby*. (2) Further, the *Bishop of St. David’s Case* (3) is an authority for holding that the archbishop’s right to cite a suffragan of the province is not interfered with by the Statute of Citations (23 Hen. 8, c. 9). And therefore it is convenient here to remark on what was said (on one of these later cases) touching that statute. That Act was for the protection of persons resident within and subject to the jurisdiction of the ordinary. And while it provided that persons should not be liable to be cited out of the diocese in which they reside, it makes exceptions in the case where the offence is committed “by the bishop . . . or other person having spiritual jurisdiction . . . or by any other person within the diocese or other jurisdiction whereunto he shall be cited.” The bishop may be cited out of his diocese. Accordingly, among all the objections raised in the *St. David’s Case* (3), the Statute of Citations was not alleged. In the contemporary case of *Bishop Jones of St. Asaph* (4) the steps were these: a complaint from the clergy of the diocese; a metropolitan visitation by commissioners to collect evidence; “a process against the bishop to appear and answer certain articles;” allegations by the bishop in vindication; a formal hearing appointed by the archbishop, June 5, 1700; suspension decreed, June, 1701, “for six months et ultra donec idone [sic] satisfecerit in premissis, et aliter a nobis vel successoribus nostris ordinatum fuerit.” His “purgation” was not satisfactory, and the sentence was continued for six months more. No objection was taken at law to the jurisdiction or its exercise. (See Narrative, &c., Lambeth Library, 113 K. 17.) Several other recent cases were cited in the argument besides *Lucy v. Bishop of St. David’s* (3);

(1) 1 Curteis’ Rep. 481.

(2) 3 Mee. & W. 120.

(3) See ante, p. 9, note (1).

(4) See ante, p. 10, note (3).

for instance, the *Dean of York's Case* (1), (in which, as it happened, prohibition was granted after sentence); *Long v. Bishop of Cape Town* (2); *Ex parte Bishop of Natal* (3); *Reg v. Archbishop of Canterbury* (4); *Bishop Compton's Case* (5); *Porter v. Rochester*. (6) In the case of *Ex parte Bishop of Natal* (3) it was laid down that no coercive legal jurisdiction in cases of heresy was transferred to the Metropolitan of Cape Town over his suffragan bishops either by law or consensually. But neither this nor any of these cases, in the opinion of the Court, shew that the Archbishop of Canterbury has not the jurisdiction as settled in the *Bishop of St. David's Case*. (7) Further, recent authority has confirmed the law as cleared and defined in that case. By the advice of the law officers of the Crown, Sir Christopher Robinson, Sir Robert Gifford (afterwards Lord Gifford) and Sir John Copley (afterwards Lord Lyndhurst), that case was acted upon and proceedings instituted before the metropolitan against the Bishop of Clogher in 1822. (8)

The Court does not enter upon the question of the Vicar-General of the Province of Canterbury correctly acting as judge instead of the Archbishop of Canterbury because it does not practically affect the present case.

The Court has now examined in detail the facts and reasonings which have been submitted to it as ecclesiastically grounds against the validity of its jurisdiction. It desires to express its obligations to the learned counsel on both sides for the learning and lucidity with which they have illustrated the subject and fortified their several contentions. The Court finds that from the most ancient times of the Church the archiepiscopal jurisdiction in the case of suffragans has existed; that in the Church of England it has been from time to time continuously exercised in various forms; that nothing has occurred in the Church to modify that jurisdiction; and that, even if such jurisdiction could be used in Convocation for the trial of a bishop, consistently with the ancient principle that in a synod bishops only could

1889

READ

v.

BISHOP OF
LINCOLN.The Archbishop
of Canterbury.

(1) 2 Q. B. 1.

(2) 1 Moo. P. C. (N.S.) 46.

(3) 3 Moo. P. C. (N.S.) 115.

(4) 11 Q. B. Rep. 483, at p. 649.

(5) 11 State Trials, 23.

(6) Coke, pt. 13, p. 396.

(7) See ante, p. 9, note (1).

(8) Phill. Ecc. Law, p. 92.

1889
 READ
 v.
 BISHOP OF
 LINCOLN.
 ———
 The Archbishop
 of Canterbury.

hear such a cause, it nevertheless remains clear that the metropolitan has regularly exercised that jurisdiction both alone and with assessors. The cases came all under one jurisdiction, but in many forms: in synods, episcopal, clerical or mixed, in council, in the Upper House of Convocation, with both Houses, in the Court of Arches, in the Court of Audience (some hold), through the Vicar-General, through arbitrators, with one assessor, with three or four or five assessors, alone absque consensu cujuslibet Episcopi, but always, except for some impediment, personally—ob reverentiam officii and ob reverentiam fratris. Nor is it strange that while the jurisdiction is one, forms should be many and cases few. The question now before us is touching the action of the archbishop, sitting together with comprovincial assessors. There is no form of the exercise of the jurisdiction in this country which has been more examined into and is better attested and confirmed.

III. The Court, therefore, although by an entirely different line of inquiry, has arrived at the same conclusion which was arrived at on purely legal principles by the unanimous judgment of the Lord High Chancellor with four judges and five bishops who constituted the Judicial Committee of the Privy Council to advise Her Majesty in August, 1888. (1) The Court decides that it has jurisdiction in this case, and therefore overrules the protest.

Proctors for promoters: *Wainwright & Baillie*.

Proctors for the Bishop of Lincoln: *Brooks, Jenkins, & Co.*

E. S. R.

[IN THE COURT OF THE ARCHBISHOP OF CANTERBURY. (1)]

1889

July 23, 24.READ *v.* BISHOP OF LINCOLN.*Ecclesiastical Law—Bishop—Rubrics—Acts of Uniformity* (1 *Eliz. c. 2*, and 13 & 14 *Car. 2, c. 4*).

The word “minister,” in the rubrics relating to the administration of the Holy Communion, must be taken to include a bishop, and a bishop officiating as minister in the service of the Holy Communion is bound to celebrate it in the order and form prescribed by the Book of Common Prayer.

OBJECTIONS to articles (2) : The Bishop of Lincoln was charged by the articles in this suit with having, when officiating as bishop and principal celebrant at a service of the Holy Communion, and being bound to celebrate it in the order and form mentioned in the Book of Common Prayer, failed to do so, whereby he had offended against the ecclesiastical law of England. The articles were substantially the same as the citation in the suit, and the present objection was substantially the same as that raised by the fourth objection of the protest to the jurisdiction, which was not argued when the principal objection was argued. (3) The first objection to the admission of the articles was also the same as that already decided (3); the second objection was in the following terms: “The matters charged, seeing that they are charged as being done by the defendant as bishop, are not offences against the laws, canons, and constitutions of this Church and Realm, and of the Province of Canterbury.”

A preliminary application to amend the articles was made by counsel for the promoters, and this having been refused, the objection was argued.

Sir *W. Phillimore*, and *A. B. Kempe (Jeune, Q.C.*, with them), for the Bishop of Lincoln. The articles do not disclose any legal ground for proceeding against the defendant; a bishop is not within the scope of the rubrics, and does not offend against eccle-

(1) The Vicar-General of the Province of Canterbury (Sir J. P. Deane) sat with the Archbishop, and also the Bishops of London, Hereford, Roches-

ter, Oxford, and Salisbury, as assessors.

(2) See App. 2, p. 46.

(3) Reported ante, p. 1.

1889

 READ
 E.
 BISHOP OF
 LINCOLN.

siastical law by neglecting to follow them, unless the ritual he employs connotes heretical doctrines, or is offensive or unseemly, or is contrary to the directions given for some particular services in which a bishop is specifically mentioned, such as consecration and ordination services, and other purely episcopal functions. The fact that there exists no case of a bishop ever having been tried for deviation from ritual shews that a bishop was left to his own discretion, looking generally to the Prayer Book as a guide: Bingham, *Antiquities of the Christian Church* (1); Hook, *Lives of Archbishops of Canterbury*. (2) In former ages of the Church the bishop of a diocese could alter the missals as he pleased: *Kemp v. Wickes*. (3)

If a bishop is within the Acts of Uniformity then various modern services at which he officiates, services for the opening of churches, admission of deaconesses and others, are illegal. If the term "minister" in the ornaments rubric in the first Prayer Book of Edward VI. (1549) is taken to include bishop, then, as the Act of Uniformity of Elizabeth revived that rubric, bishops should wear the vestment prescribed by that rubric, which they do not; again, if the term "minister" in the Advertisements (Cardwell's *Documentary Annals*, vol. i. p. 326) includes a bishop, then he ought only to wear a surplice, for the Privy Council have pronounced surplices to be obligatory: *Ridsdale v. Clifton*. (4) It is clear that the word "minister" in the rubric to the communion service does not include bishop, nor does it in the Canons of James I. [They referred to canons 14, 26, 27, 33, 36, 38, 39, 55, 58, 62, 63, 65, 68.] It is also contended that the words "all and singular ministers," and "any manner of parson, vicar, or other whatsoever minister" in the Act of Uniformity of Elizabeth (1 Eliz. ch. 2, ss. 3, 4) do not include bishop: *Archbishop of Canterbury's Case* (5), *Copland v. Powell* (6), *Cope v. Barber*. (7) Very similar words in the Act of Uniformity of Charles II. (13 & 14 Car. 2, c. 4), ss. 2, 3, 6, 24, do not include a bishop.

Sir H. Davey, Q.C., and Tristram, Q.C. (*Danckwerts*, with them), for the promoters. The word "minister" in the rubrics must be

(1) Bk. II., ch. vi., s. 1.

(4) 2 P. D. 276.

(2) Vol. vii. p. 299.

(5) Coke's Rep., Pt. II. 555.

(3) 3 Phill. 264 (268).

(6) 1 Bing. 369.

(7) Law Rep. 7 C. P. 393 (403).

taken to include a bishop, it is a general word applicable to any persons who minister in a service of the Church; in the second Prayer Book of Edward VI. it is stated that there have been three “orders of ministers in Christ’s Church, bishops, priests, and deacons.” [They referred to the prefaces to the several Prayer Books, the present Service for the Consecrating of Bishops, to canons 24 and 55 of 1603, and to Shipley’s Glossary of Ecclesiastical Terms—Minister.] It was contemplated that the Acts of Uniformity should apply to every one in the Church, and it is contended that the words of the Act, both of Elizabeth and of Charles II., include bishops; the Prayer Book of Charles II. is annexed to the Act of that reign.

Sir *W. Phillimore*, in reply.

THE ARCHBISHOP OF CANTERBURY. We have before us the objections raised by counsel for the Bishop of Lincoln to the admission of the articles in this suit. The first objection was not pressed; as regards the second, the Court is of opinion that when a bishop ministers in any office prescribed by the Prayer Book he is a minister bound to observe the directions given to the minister in the rubrics of such office.

THE BISHOP OF SALISBURY dissented.

Objection overruled.

Proctors for promoters: *Wainwright & Baillie*.

Proctors for Bishop of Lincoln: *Brooks, Jenkins, & Co.*

E. S. R.

1889

READ
v.
BISHOP OF
LINCOLN.

APPENDIX.

APPENDIX 1.

EX PARTE READ

1888
 July 20;
 Aug. 3.

The judgment of the Privy Council was as follows and was delivered by

LORD HALSBURY. "Their Lordships are of opinion that the Archbishop has jurisdiction in this case. They are also of opinion that the abstaining by the Archbishop from entertaining the suit is a matter of appeal to Her Majesty; they desire to express no opinion whatever as to whether the Archbishop has or has not, a discretion whether he will issue a citation; and they will humbly advise Her Majesty to remit the case to the Archbishop to be dealt with according to law."

APPENDIX 2.

ARTICLES.

IN THE COURT OF HIS GRACE THE LORD ARCHBISHOP OF CANTERBURY.
 THE OFFICE OF HIS GRACE THE LORD ARCHBISHOP OF CANTERBURY AS JUDGE PROMOTED BY ERNEST DE LACY READ WILLIAM BROWN FELIX THOMAS WILSON AND JOHN MARSHALL

AGAINST

THE RIGHT REVEREND EDWARD BY DIVINE PERMISSION LORD BISHOP OF LINCOLN.

IN THE NAME OF GOD AMEN.

WE EDWARD WHITE by Divine Providence Lord Archbishop of Canterbury Primate of All England and Metropolitan To you THE RIGHT REVEREND FATHER IN CHRIST EDWARD By Divine Permission LORD BISHOP OF LINCOLN All and singular the articles heads and Interrogatories hereunder written touching and concerning your Souls health and the lawful correction of your manners and more especially for having when officiating as Bishop and the principal Celebrant in the administration of the Holy Communion in the Church of St. Peter at Gowts in the City of Lincoln and in the Cathedral Church of Lincoln in the month of December One thousand eight hundred and eighty-seven been party to and taken part in the observance of certain unlawful rites and ceremonies namely the using and permitting to be used lighted candles on the Communion Table during such service as a matter of ceremony and when not wanted for light the mixing of water with the sacramental wine and the consecrating and the administering of the same to the communicants when so mixed

the openly and ceremoniously making the sign of the Cross during such service the observance of the ceremony of ablution and standing yourself whilst reading the Prayer of Consecration on the west side of the Holy Table with your back to the people in such manner that the communicants could not see you break the bread and take the cup into your hands and for having also been party to the singing of the Agnus Dei after you read the Prayer of Consecration and immediately before the reception of the sacramental elements all of which acts observances ceremonies and additions to the said service were in contravention of the ecclesiastical laws of England do by virtue of our office at the voluntary promotion of Ernest de Lacy Read of Cleethorpe in the County and Diocese of Lincoln salesman and auctioneer William Brown of Great Grimsby in the County and Diocese of Lincoln solicitor of the Supreme Court Felix Thomas Wilson of the said Parish of St. Peter at Gowts in the City of Lincoln in the same Diocese and John Marshall of the same Parish gardener article and object as follows to wit:—

1.—That in the year One thousand eight hundred and eighty-five you the said Right Reverend Edward by Divine Permission Lord Bishop of Lincoln (then the Reverend Edward King D.D.) were nominated elected confirmed and enthroned or installed to the Bishopric of Lincoln in the Province of Canterbury with its rights members and appurtenances and from that time to the present time have been and still are Lord Bishop of Lincoln and that as such you are bound to observe the laws statutes canons and constitutions of this Realm.

2.—That by two Acts of Parliament passed in a Session of Parliament holden in the first year of the reign of Queen Elizabeth Chap. 2 and in the 13th and 14th years of the reign of King Charles the Second Chapter 4 and by the 14th 36th and 38th of the Constitutions and Canons Ecclesiastical made in the reign of King James the First all Bishops are (among other things) bound to say and use the Celebration and Administration of both the Sacraments in such order and form as is mentioned in the book intituled The Book of Common Prayer and Administration of the sacraments (annexed and joined to the said last-mentioned statute) And other Rights and ceremonies of the Church according to the use of the Church of England and are bound openly to use no form or order of administration of Sacraments rights or Ceremonies in any Church or Chapel other than what is prescribed and appointed to be used in and by the said book and that any Bishop offending against the said statute Constitutions and Canons ought to receive such Ecclesiastical sentence as the nature of the offence and the exigency of the law demand.

3.—That you the said Right Reverend Edward by Divine Permission Lord Bishop of Lincoln in the Church of St. Peter at Gowts in the County of the City of Lincoln in the Diocese of Lincoln and in the Province of Canterbury on Sunday morning the Fourth day of December One thousand eight hundred and eighty-seven when you were officiating as Bishop or Minister and the principal celebrant in the Service for the Administration of the Holy Communion in the same Church used and permitted to be used lighted Candles on the Communion Table or on a ledge immediately over the said Table so constructed as to appear to form part of the said Communion Table during such service as a matter of ceremony and when such lighted candles were not wanted for the purpose of giving light.

PLEADINGS.

4.—That you the said Right Reverend Edward by Divine Permission Lord Bishop of Lincoln in the Church of St. Peter at Gowts aforesaid in the Diocese and Province aforesaid on the said Sunday Morning of the said fourth day of December One thousand eight hundred and eighty-seven when you were officiating as Bishop or Minister and the Principal Celebrant in the Service for the administration of the Holy Communion in the preceding Article mentioned in the same Church caused permitted and were a party to and took part in the mixing of water with the Sacramental Wine intended to be used in the administration of the Holy Communion at such Service and subsequently at the said Service consecrated the said Wine and Water so mixed and thereupon administered the said Wine and Water so mixed to the Communicants at such Service.

5.—That you the said Right Reverend Edward by Divine Permission Lord Bishop of Lincoln in the Church of St. Peter at Gowts aforesaid in the Diocese and Province aforesaid on the said Sunday Morning of the said fourth day of December One thousand eight hundred and eighty-seven when you were officiating as Bishop or Minister and the Principal Celebrant in the service for the administration of the Holy Communion in the last preceding Article mentioned stood while reading the prayer of Consecration in such service on the West side of the Holy Table with your face to the East and between the people and the Holy Table and with your back to the people in such wise that the Communicants present being then conveniently placed for receiving the Holy Communion when you broke the bread and took the Cup into your hand could not see you break the bread and take the cup into your hand according to the directions in that behalf contained in the Rubric immediately before the Prayer of Consecration.

6.—That you the said Right Reverend Edward by Divine Permission Lord Bishop of Lincoln in the said Church of St. Peter at Gowts in the Diocese and Province aforesaid on the said Sunday Morning of the said fourth day of December One thousand eight hundred and eighty-seven when officiating as the Bishop or Minister and Principal Celebrant in the Service for the Administration of the Holy Communion in the last preceding Article mentioned in such Church caused or permitted to be said or sung before the reception of the Elements and immediately after the reading of the Prayer of Consecration in such service the Words or Hymn or Prayer commonly known as the Agnus that is to say Oh Lamb of God that takest away the Sins of the World—Have mercy upon us.

7.—That you the said Right Reverend Edward by Divine Permission Lord Bishop of Lincoln in the said Church of St. Peter at Gowts in the Diocese and Province aforesaid on the said Sunday Morning of the said fourth day of December One thousand eight hundred and eighty-seven when officiating as the Bishop or Minister and Principal Celebrant in the Service for the Administration of the Holy Communion in the last preceding Article mentioned in such Church whilst pronouncing the absolution conspicuously and ceremoniously having both your hands elevated and looking towards the Congregation made with your hand the sign of the Cross and also that you again in like manner whilst pronouncing the Benediction in the same service made the sign of the Cross such sign being a ceremony in addition to and other than a ceremony prescribed to be used in the Service for the Administration of the Holy Communion by the Book of Common Prayer and Administration of the Holy Communion and other Rites and Ceremonies of the Church.

8.—That you the said Right Reverend Edward by Divine Permission Lord Bishop of Lincoln in the said church of St. Peter at Gowts in the Diocese and Province aforesaid on the said Sunday Morning of the said Fourth day of December One thousand eight hundred and eighty-seven when officiating as the Bishop or Minister and Principal Celebrant in the Service for the Administration of the Holy Communion in the last preceding Article mentioned in such Church without any break or interval and as connected with and as forming part of the Rites and Ceremonies of such Service caused practised permitted and were a party to and took part in the ceremony of Ablution—that is to say of pouring wine and water into the paten and chalice which had been used for the Administration of the Holy Communion at such Service and by then yourself drinking up such wine and water in the face of the Congregation being a ceremony in addition to and other than a ceremony prescribed to be used in the Service for the Administration of the Holy Communion by the Book of Common Prayer and Administration of the Sacraments and other Rites and Ceremonies of the Church.

9.—That you the said Right Reverend Edward by Divine Permission Lord Bishop of Lincoln in the said Cathedral Church of the Blessed Virgin Mary of Lincoln in the City Diocese and Province aforesaid on Sunday the eighteenth day of December One thousand eight hundred and eighty-seven when officiating as the Bishop or Minister and Principal Celebrant in the Service for the Administration of the Holy Communion stood during to the whole of such service down to the ordering of the Bread and Wine before the Prayer of Consecration on the West side of the Holy Table and not on the North side thereof.

10.—That you the said Right Reverend Edward by Divine Permission Lord Bishop of Lincoln in the said Cathedral Church aforesaid when officiating as Bishop or Minister and the Principal Celebrant in the Service for the Administration of the Holy Communion in the last preceding Article mentioned stood whilst reading the Prayer of Consecration in such service on the West side of the Holy Table with your face to the East and between the people and the Holy Table and with your back to the people in such wise that the Communicants present being then conveniently placed for receiving the Holy Sacrament could not when you broke the Bread and took the cup into your hands see you break the Bread and take the Cup into your hands according to the directions contained in the Rubric immediately before the Prayer of Consecration.

11.—That you the said Right Reverend Edward by Divine Permission Lord Bishop of Lincoln in the said Cathedral Church aforesaid on Sunday the eighteenth day of December One thousand eight hundred and eighty-seven when officiating as Bishop or Minister and the Principal Celebrant in the Service for the administration of the Holy Communion conspicuously and ceremoniously whilst pronouncing the Absolution having both your hands elevated and looking towards the Congregation made with your hands the sign of the Cross and that you also in like manner whilst pronouncing the Benediction in such Service again made the sign of the Cross such sign being a ceremony in addition to and other than a ceremony prescribed to be used in the service for the Administration of the Holy Communion by the said Book of Common Prayer and Administration of the Sacramental and other Rites and Ceremonies of the Church.

12.—That you the said Right Reverend Edward by Divine Permission Lord

PLEADINGS. Bishop of Lincoln in the said Cathedral Church aforesaid on Sunday the eighteenth day of December One thousand eight hundred and eighty-seven immediately after pronouncing the Benediction in the service for the Administration of the Holy Communion and without any break or interval and as connected with and forming part of the Rites and Ceremonies of such service caused or permitted and were party to and took part in the Ceremony of Ablution that is to say of pouring Wine and Water into the Paten and Chalice which had been used for the administration of the Holy Communion at such service and by then yourself drinking up such Wine and Water in the face of the congregation being a Ceremony in addition to and other than a ceremony prescribed to be used in the service for the Administration of the Holy Communion by the said Book of Common Prayer and Administration of the Sacraments and other rites and Ceremonies of the Church.

13.—That the use of the lighted candles the mixing the water with the Sacramental Wine the saying or singing immediately after the reading of the Prayer of Consecration of the Agnus "Oh Lamb of God that takest away the sins of the World —Have mercy upon us" the conspicuously and ceremoniously making the sign of the cross and the ceremony of Ablution as Articled and complained of against you the Right Reverend Edward by Divine permission Lord Bishop of Lincoln in the third fourth sixth seventh eighth eleventh and twelfth preceding Articles are respectively unlawful additions and variations from the form and order prescribed and appointed by the said Statutes and of the order of the administration of the Holy Communion contained in the Book of Common Prayer and are respectively contrary to the said Statutes and to the Rubrics of the order of the Administration of the Holy Communion and to the 14th 36th and 38th of the said Constitutions and Canons.

14.—That the mixing of water with the Sacramental Wine and the consecrating and administering the same when so mixed as articled and complained of against you The Right Reverend Edward by Divine permission Lord Bishop of Lincoln in the fourth preceding Article were acts done in contravention of the provisions of the Rubrics prescribing the elements to be used in the administration of the Holy Communion and in respect of the consecration and administering of the same.

15.—That your standing whilst reading the prayer of Consecration on the West side of the Holy Table with your back to the people so that the Communicants present being conveniently placed for receiving the Holy Communion when you broke the bread and took the cup into your hands could not see you perform the manual acts as prescribed by the Rubrics as articled and complained of against you The Right Reverend Edward by Divine permission Lord Bishop of Lincoln in the Fifth and Tenth preceding Articles was in contravention of the directions of the Rubric immediately before the Prayer of Consecration.

16.—That you the said Right Reverend Edward by Divine Permission Lord Bishop of Lincoln as Bishop of Lincoln are a Bishop Suffragan of the Province of Canterbury and therefore and by reason of the premises were and are subject to the jurisdiction of this Court.

17.—That the said Ernest de Lacy Read William Brown Felix Thomas Wilson and John Marshall the Promoters in the Cause have rightly and duly complained of the premises to us the Judge aforesaid and to this Court.

18.—That all and singular the premises are true and the Solicitors for the Promoters pray that on legal proof thereof being made Your Grace The Lord Archbishop of Canterbury as Judge of this Court will be pleased to pronounce that the said Right Reverend Edward by Divine permission Lord Bishop of Lincoln has offended against the Laws Statutes Constitutions and Canons Ecclesiastical of England in the particular matters hereinbefore alleged or in some one or more or all of them that Your Grace as such Judge will be further pleased to pass such Ecclesiastical sentence on the said Right Reverend Edward by Divine permission Lord Bishop of Lincoln as the nature of the offences proved and the exigency of the law demand. And that Your Grace as such Judge be further pleased to condemn the said Right Reverend Edward by Divine permission Lord Bishop of Lincoln in the costs made and to be made on the part and behalf of the said Ernest de Lacy Read, William Brown, Felix Thomas Wilson and John Marshall the Promoters to this Cause and that the said Right Reverend Edward by Divine permission Lord Bishop of Lincoln be compelled to the due payment thereof.

PLEADINGS.
—

HORACE DAVEY, Q.C.

THOMAS H. TRISTRAM, Q.C., D.C.L.

W. O. DANCKWERTS.

APPENDIX 3.

PROTEST.

BEFORE HIS GRACE THE LORD ARCHBISHOP OF CANTERBURY.

The Office of His Grace the LORD ARCHBISHOP OF CANTERBURY promoted by

ERNEST DE LACY READ,
WILLIAM BROWN,
FELIX THOMAS WILSON, AND
JOHN MARSHALL,

v.

THE RIGHT REVEREND EDWARD
LORD BISHOP OF LINCOLN.

The Nineteenth day of February in the year of our Lord One thousand eight hundred and eighty-nine.

On which day BROOKS AND JENKINS referring to their Appearance under Protest for the Right Reverend Edward Lord Bishop of Lincoln in extension of such their Protest alleged that the said Lord Bishop of Lincoln is ready to pay all due Reverence and Obedience to His Grace the Lord Archbishop of Canterbury and to submit himself to his Metropolitan Jurisdiction so far and in such Form and Manner as is allowed and required by his Oath made in that behalf and by the Laws Canons and Constitutions Ecclesiastical of this Church and Realm and of the Province of Canterbury But they said that there was no jurisdiction to cite and that the said Lord Bishop of Lincoln ought not to be cited to appear and answer in these Proceedings for the Reasons following :—

1.—The said Citation does not cite the said Lord Bishop of Lincoln to appear

PLEADINGS. in any Court or in any Proceedings whereof the said Laws Canons and Constitutions take cognizance.

2.—By the said Laws Canons and Constitutions the said Lord Bishop of Lincoln is not bound and ought not to appear before or be tried by the said Lord Archbishop of Canterbury sitting alone, or to appear before or be tried by the Vicar-General of the said Lord Archbishop of Canterbury; and the fact that the said Lord Archbishop of Canterbury proposes to sit with Assessors does not confer a jurisdiction which he would not otherwise have.

3.—By the said Laws Canons and Constitutions the said Lord Bishop of Lincoln as a Bishop of the Province of Canterbury ought not to be tried for the Offences (if any) with which he is charged in these Proceedings save by the said Lord Archbishop of Canterbury together with the other Bishops of the said Province his Comprovincials assembled either in the Convocation of the said Province or otherwise.

4.—The Charges set forth in the Citation are not such Charges as by the said Laws Canons and Constitutions the said Lord Bishop of Lincoln is bound or ought to answer or be tried for before or by any Court of Ecclesiastical Jurisdiction.

WHEREFORE they prayed that this their Protest might be sustained and that the Proceedings herein might be dismissed and that otherwise Right and Justice might be done.

GEORGE H. BROOKS.
EDGAR F. JENKINS.

WALTER G. F. PHILLIMORE.
F. H. JEUNE.
A. B. KEMPE.

ANSWER.

IN THE COURT OF HIS GRACE THE LORD ARCHBISHOP OF CANTERBURY.

The Office of His Grace the LORD ARCHBISHOP OF CANTERBURY promoted by

ERNEST DE LACY READ,
WILLIAM BROWN,
FELIX THOMAS WILSON, AND
JOHN MARSHALL,

v.

THE RIGHT REVEREND EDWARD
LORD BISHOP OF LINCOLN.

The First day of March in the year of our Lord One thousand eight hundred and eighty-nine.

On which day WAINWRIGHT AND BAILLIE referring to the extended Protest brought in by BROOKS AND JENKINS as Proctors for the Right Reverend Edward Lord Bishop of Lincoln and denying that His Grace the Lord Archbishop of Canterbury has no Metropolitan Jurisdiction to cite the said Lord Bishop of Lincoln before His Grace's Metropolitan Court duly constituted for the hearing of this cause expressly denied that the said Lord Bishop of Lincoln ought not to be cited to appear and answer on these proceedings for the reasons in the said extended Protest stated. And further denied—

1.—That the said citation did not cite the said Lord Bishop of Lincoln to

appear in any Court or in any proceedings whereof the said Laws Canons and Constitutions take cognizance as in the first paragraph of the said Extended Protest alleged. PLEADINGS. —

2.—That by the said Laws Canons and Constitutions the said Lord Bishop of Lincoln is not bound and ought not to appear before or be tried by the said Lord Archbishop of Canterbury sitting alone or to appear before the Vicar-General of the said Lord Archbishop of Canterbury or that the fact that the said Lord Archbishop of Canterbury proposes to set with Assessors does not confer a jurisdiction which he would not otherwise have as the second paragraph of the said Extended Protest alleged.

3.—That by the said Laws Canons and Constitutions the said Lord Bishop of Lincoln as a Bishop of the Province of Canterbury ought not to be tried for the offences (if any) with which he is charged in these proceedings save by the said Lord Archbishop of Canterbury together with other Bishops of the said Province his Comprovincials assembled either in the Convocation of the said Province or otherwise as in the third paragraph of the said Extended Protest alleged.

4.—That the charges set forth in the Citation are not such charges as by the said Laws Canons and Constitutions the said Lord Bishop of Lincoln is bound or ought to answer or be tried for before or by any Court of Ecclesiastical Jurisdiction as in the fourth paragraph of the said Extended Protest alleged.

WHEREFORE they prayed His Grace the Lord Archbishop of Canterbury to reject the Prayer of the Proctors for the said Lord Bishop annexed to the said Extended Protest and prayed that the Proceedings herein might be continued and that the said Lord Bishop of Lincoln might be condemned in the costs of the Promoters occasioned by and incidental to the said Extended Protest and that otherwise Right and Justice might be done.

Amended by Order of the Vicar-General dated 1st March, 1889.

G. W. R. WAINWRIGHT.

T. J. BAILLIE.

CONCLUSION.

BEFORE HIS GRACE THE LORD ARCHBISHOP OF CANTERBURY.

The Office of His Grace the LORD ARCHBISHOP OF CANTERBURY promoted by

ERNEST DE LACY READ,
WILLIAM BROWN,
FELIX THOMAS WILSON, AND
JOHN MARSHALL,

v.

THE RIGHT REVEREND EDWARD
LORD BISHOP OF LINCOLN.

On Friday the First day of March in the year of our Lord One thousand eight hundred and eighty-nine.

Both Proctors alleged and prayed as before.

Whereupon the Vicar-General concluded the Pleadings on the Protest of the

AUTHORITIES. Proctor for the Right Reverend the Lord Bishop of Lincoln and assigned the same for Informations before His Grace the Lord Archbishop of Canterbury whensoever.

G. W. R. WAINWRIGHT,
Proctor for the Promoters.

EDGAR F. JENKINS,
Proctor for the Lord
Bishop of Lincoln.

AUTHORITIES CITED.

APPENDIX 4.

A.D. 680. RECOGNITION OF THE GENERAL COUNCILS BY THE COUNCIL OF HATFIELD.

Hæc quoque sancta Synodus suis literis addit:—"Suscepimus sanctas et universales quinque Synodos beatorum et Deo acceptabilium patrum; id est, qui in Nicæa congregati fuerunt trecentorum decem et octo, contra Arium impiissimum et ejusdem dogmata; et in Constantinopoli centum quinquaginta, contra vesaniam Macedonii et Eudoxii et eorum dogmata; et in Epheso primo ducentorum, contra nequissimum Nestoriam et ejusdem dogmata; et in Chalcedone sexcentorum et triginta, contra Entychen et Nestorium, et eorum dogmata; et iterum in Constantinopoli quinto congregati sunt concilio in tempore Justiniani minoris, contra Theodorum, et Theodoretum et Ibæ epistolas et eorum dogmata contra Cyrillum." Et paulo post: "Et Synodum quæ facta est in urbe Roma, in tempore Martini Papæ beatissimi, indictione octava, imperante Constantino piissimo anno nono, suscepimus."—*Councils and Ecclesiastical Documents, Haddan & Stubbs, Vol. III., p. 142.*

APPENDIX 5.

A.D. 787. RECOGNITION OF THE GENERAL COUNCILS BY SYNODS OF NORTHERN AND SOUTHERN PROVINCES.

(See as to these—*Councils and Ecclesiastical Documents, by Haddan & Stubbs, Vol. III., p. 447.*)

1.—"Primo omnium admonentes, ut sancta et inviolata fides Niceni concilii, ab omnibus qui sacro cultui mancipantur, fideliter et firmiter teneatur, et omni anno in synodalibus conventibus ab Episcopis singularum ecclesiarum presbyterii qui populum erudire debent, de ipsa fide diligentissime examinentur, ita ut Apostolicam fidem et universalem sex Synodorum per Spiritum Sanctum probatam, sicut tradita est nobis a sancta Romana Ecclesia, per omnia confiteantur, teneant et prædicent: et si opportunum venerit, pro ea mori non pertimescant; et quoscunque sancte universalia concilia susceperunt, suscipiant, et quos illa damnaverunt, eos et corde rejiciant, et condemnent. . . ."

4.—"Quartus sermo, ut Episcopi diligenti cura provideant, quo omnes

canonici qui canonice vivant. . . . Qua de re suademus, ut synodalia edicta universalium sex conciliorum cum decretis Pontificum Romanorum sæpius lectitentur, observentur, et juxta eorum exemplar Ecclesiæ status corrigatur, ut ne quid novi ab aliquibus introduci permittatur, ne sit schisma in Ecclesia Dei. . . .”—*Haddan & Stubbs, Vol. III., pp. 448, 450.*

AUTHORITIES.

APPENDIX 6.

RECOGNITION OF THE GENERAL COUNCILS BY THE CANONS OF AELFRIC.

A.D. 970.

CANON XXXIII.—“Quatuor Synodi erant pro vera fide adversus hæreticos, qui stulte loquebantur de sacra Trinitate, et salvatoris humanitate; prima fuit Nicææ, prouti antea memoravimus; et secunda fuit deinde Constantinopoli e centum quinquaginta episcopis, sanctis Dei viris; tertia fuit Ephesi, ubi ducenti episcopi erant; et quarta fuit Chalcedonii, ubi multæ centuriæ episcoporum erant; et hi omnes unanimes fuerunt inter se in constitutione, quæ stabilita fuit Nicææ, et reparaverunt quicquid de ea violatum fuit. Hæ quatuor Synodi observandæ sunt, prouti quatuor Christi libri in ecclesia Christi. Multæ Synodi deinde congregabantur, sed quatuor illæ sunt præcipuæ, quoniam extinxerunt hæreticas illas doctrinas, quos hæretici invenerunt hæretice adversus Deum; et ii etiam constituerunt ecclesiasticum ministerium.”—*Wilkins' Conc., Vol. I., p. 254.*

APPENDIX 7.

GENERAL COUNCIL OF CONSTANTINOPLE.

A.D. 381.

CANON 6.—“If any one bring a private or personal accusation against a Bishop, as having been oppressed or injured by him, no regard shall be had of the person or religion of him who brings the accusation: but if an ecclesiastical crime be objected against the Bishop, then the person of him who brings the accusation shall be considered; that so heretics and schismatics may not accuse orthodox Bishops; and that they of the clergy or laity that stand condemned, or deposed, or excommunicated, may not accuse a Bishop till they are cleared from the crimes charged upon them; and that, likewise, they who are themselves accused beforehand, be not allowed to accuse a Bishop or clergyman, till they have proved themselves to be innocent. An information against a Bishop must first be preferred before the Provincial Bishops, and if they be not sufficient to rectify matters, then let it be brought before the Great Synod of the Diocese; and let not the informers be permitted to produce their allegations till they have obliged themselves in writing to some penalty equal [to what the Bishop, in case he be convicted shall incur] if it be made to appear that the information

AUTHORITIES against the Bishop was false and feigned: but if any one dare trouble the Emperor's ears, or the temporal judicatures, or a General Council, neglecting the Bishops of the Diocese, he shall by no means be allowed to give information, as being one that throws contempt and reproach upon the Canons, and subverts the ecclesiastical order."—*Johnson's Vade Mecum*, Vol. 11., p. 129, 4th Ed.

APPENDIX 8.

A.D. 451.

GENERAL COUNCIL OF CHALCEDON.

CANON 1.—"We pronounce it to be fit and just that the Canons of the Holy Fathers made in every Synod to this present time be in full force."

CANON 9.—"If one clergyman have a controversy with another, let him first lay it before his own Bishop, or let it be tried by referees chosen by each party, with the consent of the Bishop. Let him that does otherwise be liable to Canonical censure. If a clergyman have a complaint against his own or another Bishop, let it be determined by a Provincial Synod: but if a Bishop or clergyman have a dispute with his Metropolitan, let him apply himself to the Exarch of the Diocese, or to the Throne of Constantinople."—*Johnson's Vade Mecum*.

APPENDIX 9.

A.D. 341.

COUNCIL OF ANTIOCH.

CANON 9.—"It behoves the Bishops in every Province to own him that presides in the Metropolis; because the Metropolis is a place of universal concourse; therefore it is decreed that he have special honour paid him, and that the other Bishops do nothing extraordinary without him, according to the Ancient Canon which was in force [in the age of] our fathers. Let every Bishop have power over his own parish and the adjacent country to ordain priests and deacons, and determine everything with judgment; but let him do nothing else without the Bishop of the Metropolis, nor he without consent of the rest."

CANON 11.—"If any Priest or Deacon, being deposed by his Bishop, or any Bishop being deposed by the Synod, dare trouble the Emperor, he shall be incapable of pardon, or having his cause heard again; for he ought to apply himself to a Great Synod, and to submit to their examination and judgment."

CANON 13.—"Let no Bishop go from one Province to another to ordain men to the dignity of the liturgy, though he have others with him, except he be invited by the letters of the Metropolitan, and the Bishops that are with him, into whose Province he goes. All is null that is done by Bishops coming without invitation, and they are to be deposed by a Holy Synod."

CANON 14.—"If any Bishop, upon an information against him, be tried by the Bishops of the Province, and they cannot agree in their sentence, let the

Metropolitan call others from some neighbouring Province, to determine the controversy, together with the Provincial Bishops.” AUTHORITIES.

CANON 15.—“If any Bishop upon an accusation preferred against him be condemned by all the Bishops of the Province unanimously, he shall not have his cause heard over again by others, but the unanimous sentence of the Provincial Bishops shall stand.”—*Johnson’s Vade Mecum*.

APPENDIX 10.

APOSTOLIC CANONS.

A.D. 250-350.

CANON 27.—“The Bishops of every Province ought to own him who is chief among them, and esteem him as their head, and to do nothing extraordinary without his consent; but every one those things only which concern his own Parish, and the country subject to it. Nor let him [that is Chief Bishop] do anything [extraordinary] without the consent of all.”

CANON 66.—“If a Bishop be accused by credible persons that are communicants, let him be cited by the Bishops, and if he appear and plead and be convicted, let sentence be passed; but if he do not obey the summons, let him be cited by two Bishops a second time; and if he do not then appear, a third time; and if then he be guilty of contempt in not appearing let the Synod pronounce such a sentence against him as they think fit.”—*Johnson’s Vade Mecum*.

APPENDIX 11.

WINFRID, BISHOP OF LICHFIELD.

A.D. 673.

Afterwards came another Archbishop to Canterbury, who was called Theodore; a very good man and wise: and held his Synod with his Bishops and his clergy. There was Winfrid, Bishop of the Mercians, deprived of his Bishopric; and Saxulf, Abbot, was there chosen Bishop; and Cuthbald, Monk of the same Minster, was chosen Abbot. This Synod was holden after Our Lord’s Nativity, 673 winters.—*Anglo-Saxon Chronicle (Rolls Edition), Vol. II., p. 29.*

APPENDIX 12.

WILFRID, BISHOP OF YORK.

A.D. 678.

. . . . in Cantuaria regione portum salutis Deo adjuvante invenerunt. Illic autem Archiepiscopo Berthvaldo invento, Sancti [Wilfridi] Pontificis nostri nuntii cum eo loquebantur. Qui eis spopondit mitigare judicia dura olim in Synodo statuta. . . . Denique post non multi temporis spatium, Ethelredo amico suo docente, Sanctus Pontifex noster electos nuntios Padwinum Presbyterum et

AUTHORITIES. Abbatem, magistrumque Alfridum ad Alfridum Ultra-Umbrensiū Regem, sibiſque notos emisit, . . . Quibus Rex, sicut consiliarii ejus persuaserunt, respondit: O fratres mihi ambo venerabiles, petite à me vobis nec ipsiſ necessaria, et ego propter reverentiam vestram donabo vobis. De causa vero Wilfridi Domini vestri nolite me ab hoc die diutius flagitare. Quia quod ante predecessores mei Reges, et Archiepiscopus, cum consiliariis suis censuerunt, et quod postea nos cum Archiepiscopo ab Apostolice sede emisso cum omnibus pene Britanniae vestrae gentis Praesulibus judicavimus; hoc, inquam, quamdiu vixero, propter Apostolicae sedis (ut dicitis) scripta nunquam volo mutare.—*Eddius, Vita S. Wilfridi, Cap. LV-LVI., Gale. Scriptores XV., Vol. I., p. 83.*

APPENDIX 13.



A.D. 684.

TUNBERHT, BISHOP OF HEXHAM.

Congregata synodo sub praesentia regis Egfridi juxta fluvium Alne, in loco qui dicitur Twiford, cui Theodorus archiepiscopus praesidebat, Tunberhto ab episcopatu deposito, unanimo omnium consensu ad episcopatum Hagustaldendissae ecclesiae Cuthberht eligitur.—*Florentius Wigornensis (Ed. Thorpe 1848) p. 38.*

APPENDIX 14.



A.D. 1075.

WULSTAN, BISHOP OF WORCESTER.

Rex tandem Willelmus de negotiis tractare disponens ecclesiasticis, anno Domini millesimo septuagesimo quinto, fecit apud Westmonasterium Synodum congregari, cui praesidens Lamfrancus Cantuariensis Archiepiscopus cum suis suffraganeis, caepit corrigenda corrigere, clericis etiam et monachis honestiorem vivendi formam praebere; apud hunc Archiepiscopum beatus Wlstanus simplicitatis et illiteraturae accusatur, et quasi homo idiota, qui linguam Gallicanam non noverat nec regis consiliis interesse poterat, ipso rege consentiente et hoc dictante, decernitur deponendus. Igitur Lamfrancus inter caetera concilii statuta virum Dei Wlstanum jubet ut baculum cum anulo resignaret.—*Matthew Paris, Chronica Majora (Rolls Edition), Vol. II., p. 40.*

APPENDIX 15.



A.D. 1166.

JOCELIN, BISHOP OF SALISBURY.

Episcopi et clerus Cantuariensis Provinciae ad Alexandram Papam.

Minis quoque gravibus superaddita sunt graviora. Quosdam namque fideles et familiares domini nostri regis primarios regni proceres, regis specialiter assis-

tentes secretis, in quorum manu consilia regis et regni negotia diriguntur, non citatos, non defensos, non (ut aiunt) culpæ suæ conscios, non convictos aut confessos, excommunicationis innodavit sententia, et excommunicatos publice denunciavit. Adjecit etiam ut venerabilem fratrem nostrum dominum Saresberiensem episcopum absentem et indefensum, non confessum aut convictum, sacerdotali prius et episcopali suspenderet officio quam suspensionis ejus causa comprovincialium aut aliquorum etiam fuisset arbitrio comprobata. Si hic itaque judiciorum ordo circa regem, circa regnum, tam præpostere, ne dicamus inordinate, processerit, quidnem consequi posse putabimus? — *Materials for History of Becket, Vol. V., pp. 40–7.*

Thomæ Cantuariensi Archiepiscopo Nicolaus de Monte-Rothmagensi.

Radulfus de Hospitali, veniens ab Anglia, dixit nobis quod episcopi convenientes circa festum Sancti Johannis appellaverunt contra vos ad Viri Galilei, eo quod episcopum Sarisberiensem absque eorum consilio suspendistis. — *Materials for History of Becket, Vol. V., p. 421.*

APPENDIX 16.

GODFREY, BISHOP OF ST. ASAPH.

A.D. 1175.

“In ipso autem concilio” (*Council of Westminster under the presidency of Richard Archbishop of Canterbury*) “clerici Ecclesiæ Sancti Asaph petierunt a Cantuariensi Archiepiscopo, ut in vi obedientiæ præciperet Godefrido Ecclesiæ Sancti Asaph Episcopo ad sedem Ecclesiæ suæ redire, cui præfuit pontificali potentia, vel ut prædictus Archiepiscopus alium Episcopum loco ipsius Godefridi institueret. Ipse enim Godefridus Episcopatum suum deseruit, paupertate et Walensium infestatione compulsus. Veniensque in Angliam, a Christianissimo Rege Henrico benigne et honorifice susceptus est. Et tradidit ei Rex abbatiam Abendonæ vacantem, in custodia, donec ad sedem propriam liberum habaret regressum. Itaque præfatus Cantuar. Archiepiscopus in ipso concilio ad instantiam prænominatorum clericorum, et admonitione Alexandri summi Pontificis, necnon et concilio venerabilium coepiscoporum suorum, convenit jam dictum Godefridum, ut in vi obedientiæ ad sedem propriam rediret, vel curam pastorem, quæ sibi erat commissa, in manu ipsius libere et absolute resignaret. Ipse vero Godefridus, sperans quod Abbatia de Abbedonia quæ tradita fuerat ei ad custodiendum posset sibi remanere, Episcopatum suum nullo cogente, resignavit in manum Cant. Archiepiscopi, et tradidit ei annulum suum et baculum pastorem, et ipse Cantuar. privavit eum concessi ordinis dignitate et loco, et s'atuit loco ipsius et consecravit Magistrum Adam in Episcopum Sancti Asaph.” — *Hadden & Stubbs, Councils and Ecclesiastical Documents, Vol. I., p. 377, and Wilkins' Concil., Vol. I., p. 479 note.*

APPENDIX 17.

A.D. 1139.

TRIAL OF BISHOPS.

COUNCIL OF OXFORD.—Alii contra, quorum partibus assistebat Henricus Wintonensis episcopus, sedis Apostolicæ in Angliâ legatus, frater regis Stephani, ut ante dixi; quem nec fraterna necessitudo, nec periculi metus, a vero tunc exorbitare cogebat. Sic porro dicebat: "Si episcopi tramitem justitiæ in aliquo transgredierentur, non esse regis, sed canonum judicium; sine publico et ecclesiastico concilio illos nulla possessione privari debuisset."—*Malmesbury. Historia Novella. Lib. II. § 21. (Edition Hardy, 1840, Vol. II., p. 718.)*

APPENDIX 18.

A.D. 1457. The following extract from Lewis' Life of Peacock is the most material of those cited:—

"However this be, we are told that our Bishop's opinions which he had propagated among the common people, by publishing them in English, coming to the ears of those men who were the more valiant champions of the faith, and bolder soldiers of the ecclesiastical courts, they resolved to nip this plague in the bud, and provide themselves of such a remedy as might effectually stop the mouth of him who uttered such perverse things, and cut off his hand, who wrote things not only to be suspected, but which deserved to be burnt. That going therefore to the Archbishop, the solid hinge and stout pillar of the Church of England, they besought him that for the preservation of the faith, now in danger of being sunk, his Grace would cause the Bishop to be cited, and appoint him the day, hour, and place to appear before him to answer those things which should be objected to him in a cause of faith.

"The Archbishop, to satisfy the importunity of these Doctors, &c., ordered the Bishop to be cited to appear before him and to bring with him the books he had written and published, against which exceptions had been taken, so that they might be examined according to a decree made and promulgated some time before." Sect. 21, p. 147.

"This citation of our Bishop to appear before the Archbishop and produce the books he had written, in order to their being examined as above said, soon made a great noise; and it was presently published in the pulpits by such of the clergy as were prejudiced against the Bishop, at Paul's Cross and elsewhere, that his lordship had written in the said books certain conclusions contrary to the orthodox faith, and did pertinaciously hold and defend them. Of this the Bishop seems to have complained to the Archbishop, as very injurious to his state and good fame, and an immense grievance of himself and his opinions. The Archbishop, therefore, issued forth his mandate at his manor of Lambeth, October 22, 1457, and directed it "to all and singular persons, vicars, chaplains, curates, and not curates, clerks, and learned men whomsoever, throughout the Province of

Canterbury, commanding and enjoining them publicly and generally to admonish all and singular who would oppose anything against the conclusions of the said Bishop, had or contained in his books or writings, freely to appear before the Archbishop or his commissaries on the 20th day after this nomination made to them by them, wheresoever the Archbishop, &c., should then be, in the city, diocese, or Province of Canterbury, sufficiently and fully to propose and allege in writing whatever heretical or erroneous things they have to say or propose against the conclusions of this kind in the books aforesaid, that they do not presume in any manner out of court to assert, judge, or preach anything to the prejudice or scandal of the aforesaid Lord Bishop Reynold, whilst this affair of the Bishop and discussion of his books and conclusions before him or his commissaries was depending and unfinished."

"This was not only an act of justice to the Bishop; but what was necessary to preserve the power and authority of the Archbishop's Court; since if the credit and reputation of men must fall or be condemned by the malice and prejudice of private persons, without their having any opportunity to answer their accusers and defend themselves, as the most innocent cannot possibly be safe, so it must make the judgments or legal sentences of Courts of little weight or authority when private persons thus presume to take the cause out of their superiors' hands and prejudge for them." Sect. 23, p. 148.

APPENDIX 19.

CHENEY, BISHOP OF GLOUCESTER.

A.D. 1571.

Notice was taken at this third session (which was April 23), that Richard, Bishop of Gloucester, had not appeared, neither in person nor proxy, in any of these three sessions; and that he had been that day in Westminster, and was out of town without any leave asked of the President (whatever was the cause, whether, being popishly affected in some things, he liked not what was to be done this Convocation, or whether he cared not to subscribed to the XXXIX. Articles, which was to be done by all the members of the Synod, is unknown). This was taken into consideration by the House; and having been summoned, and not appearing neither in person nor proxy, and before declared contumacious for absence, it was unanimously agreed by the Archbishop and his brethren, that he ought to be excommunicated; and consequently the Archbishop read the sentence of excommunication against him. The form whereof may be found in the Appendix.—*Strype's Parker, Vol. II., p. 52.*

THE APPENDIX, No. LXI.

The form of the Excommunication of the Bishop of Gloucester, pronounced by the Archbishop in Synod, anno 1571.

In Dei nomine Amen. Cum Nos Matthæus providentia Divina Cantuarien. Archiepiscopus, totius Angliæ Primus et Metropolitannus, ritè et legitime procedens, reverendum in Christo Patrem Dom. Richardum Glocestren. Episcopum, ac Commendatarium Episcopatus Bristolien., alias propter suam contumaciam et

AUTHORITIES. manifestum contemptum in non comparendo coram nobis, neque per se neque per Procurem suum, in hac presenti Convocatione sive sacra Synodo provinciali in domo capitulari ecclesiæ cathedralis D. Pauli London, tertio die presentis mensis April. inchoata et celebrata, ac de die in diem usque ad hos diem et locum continuata et prorogata, juxta citationem et monitionem ultimam et peremptoriam alias sibi ex parte nostra fact': pronuntiaverimus contumacem, penam contumaciae, sive humoi. ad arbitrium nostrum reservando; Nos Matthæus Archiepiscopus antedict. penam contumaciae dicti Episcopi et Commendatarii de consensu confratrum nostrorum nobiscum in hac presenti Convocatione assidentium, excommunicavimus in hiis scriptis.

Lect. per præfatum reverendiss. Patrem D. Matthæum Archiepiscopum Cant. in Capella Regis Henrici VII. infra ecclesiam Collegiatam D. Petri Westmon. XX^o die Mensis April., Anno Dom. 1571.

Concordat cum registro,

Incent, Registrarius.

—*Strype's Parker, Vol. III., p. 182.*

APPENDIX 20.

A.D. 1640.

GOODMAN, BISHOP OF GLOUCESTER.

Acta in superiore Domo Convocationis, incæptæ decimo quarto die Aprilis, anno 1640.

Ultima sessio.

Die Veneris 29^o, viz. die mensis Maii, anno Domini 1640, inter horas, &c., reverendissimus, &c., judicialiter sedens; prolocutor venit cum quibusdam aliis e cœtu domus inferioris, et proposuit quendam canonem. Tunc, eo dimisso, habitoque tractatu inter reverendissimum patrem antedictum et confratres suos super eodem canone, prolocutor cum toto cœtu domus inferioris prædictæ revertebat; et reverendissimus cum unanimi consensu prælatorum et cleri hujus sacrae Synodi decrevit regiam majestatem supplicandam fore, ut liber publicarum precum, in Latinum versus, reprimatur, prout in actu Synodico sequenti continetur, viz. :—"Discernimus insuper," &c. Deinde, reverendissimus, in præsentis dicti domini prolocutoris, et totius cœtus domus inferioris, protulit librum canonum in hac sacra synodo tractat. continentem septemdecim capitula canonum. Quem reverendissimus in manibus suis tenens, cum domino prolocutore, alta et intelligibili voce legebat. Quo perlecto, reverendissimus, et reverendi patres antedicti (excepto domino episcopo Gloucestren. antedicto, subscribere pro tempore denegan.) ac dominus prolocutor et totus cœtus domus inferioris antedictæ, isto die comparentes, nominibus suis et aliorum pro quibus constituti sunt consensum et assensum suos eisdem canonibus præstiterunt, et eorum nomine manibus suis propriis eisdem respective subscripserunt. Et reverendissimus, inter hasce subscriptiones, interrogavit dictum dominum episcopum Gloucestren. an dictis canonibus assensum suum præbere, et nomen subscribere velit; idem dominus episcopus respondendo denegavit. Unde reverendissimus primo, secundo et tertio, monuit eundem dominum episcopum ad subscribendum. Ipse refutavit,

et sic ad secundam et tertiam monitionem canonicam respondebat, nisi ad sub-
scribendum negative, petendo beneficium synodi. Tunc reverendissimus eundem
dominum episcopum Gloucestre. ob contumaciam et inobedientiam suam hujus-
modi, ad episcopatu suo pro parte sua deprivandum fore decrevit, ac monuit et
jussit dominum Johannem Lambe militem tunc presentem, ad concipiendum
sententiam deprivationis; et ad vota et suffragia praelatorum ad eundem effectum
processit. Post aliquem processum hujusmodi habitum, major pars praelatorum
vota sua deprivationi dicti domini episcopi præbuit. Tunc præfatus dominus
episcopus obtulit ad scribendum, et de facto nomen suum dicto libro apposuit.
Quibus sic gestis, dictoque reverendo patre interrogato per reverendissimum ad
rogatum prolocutoris et aliorum e cœtu domus inferioris, ac ipse subscripsit
voluntariè et ex animo, sine æquivocatione, animi evasione, et secreta reservatione;
respondebat, quod ipse subscripsit, et aliter denegavit respondere. Deinde dimisso
domino prolocutore cum toto cœtu domus inferioris, reverendissimus et confratres
sui prædicti super istud grave scandalum, ecclesiæ Anglicanæ, et huic sacræ
Synodo per dictum dominum episcopum illatum inter se tractarunt, et unanimiter
vota sua dederunt pro suspensione ejusdem episcopi ab officio et beneficiis
suis ecclesiasticis. Et mox dominus prolocutor cum toto cœtu domus inferioris
revertebat, ac nomine suo et totius cœtus prædicti, dixit se et totum cœtum
domus suæ, citra istud scandalum ecclesiæ huic Anglicanæ et Synodo sacræ pre
dominum episcopum Gloucestr. illatum, tractasse, et vota sua et eorum suspen-
sioni ejusdem episcopi ab officio et beneficiis præbuisse. Et ulterius dominus
prolocutor, nomine suo et eorum, dominum archiepiscopum imploravit, ut dictus
dominus episcopus Gloucestr. ante recessum suum ab hac civitate, juramentum
in sexto canone in hac sacra Synodo tractat. mentior at. præstaret; et ut reverend-
issimus interrogaret eundem dominum episcopum an ipse subscripsit bona fide
sine æquivocatione et animi evasione. Unde facta monitione dicto domino
episcopo Gloucestre. quod non recedat a civitate, donec juramentum prædictum
ei oblaturum præstiterit et subierit, reverendissimus cum consensu totius Synodi
dictum dominum episcopum Gloucestre. ab officio et episcopatu suo Gloucestr.
et ab omnibus beneficiis suis ecclesiasticis suspendendum fore decrevit, donec
serenissimo domino nostro regi et sacræ ecclesiæ ob magnum hujusmodi dedecus
et grave scandalum illatum, satisfecerit. Eumque in scriptis suspendebat, prout
in schedula sequenti continetur, viz. "In Dei nomine, Amen. Nos Gulielmus,"
&c.—*Gibson's Synodus Anglicana* (Ed. 1854), p. 195.

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AUTHORITIES.

APPENDIX 21.

WOOD, BISHOP OF COVENTRY AND LICHFIELD.

A D 1648

Extracted from the Registry of the Arches Court of Canterbury.

D Eps Coven et Licheñ coñ D^m Hacket of^m Dni promoꝝ p Jacob coñ D^m
Epsam Coven. etc.

IN DEI NOMINE AMEN. Cum coram Nobis Richardo Lloyd Milite et
Legum Doctore Surrogato venerabilis et egregii viri Dni Roberti Wyseman Militis

AUTHORITIES. et Legum Doctoris Almae Curiae Cantuariensis de Archibus London Officialis Principalis legitime constituti. Quaedam Causa Dilapidationis et Ruinae in Judicio inter Reverendum in Christo Patrem ac Dominum Dominum Thomam permissione divina Coveñ et Licheñ Ep̃um partem agentem et querelañ ex unâ et Dominum Andream Hackett Militem Executorem Testamenti Reverendi in Christo Patris ac Dni Dni Johannis permissione divina nuper Coveñ et Licheñ Episcopi deft partem ream et querelañ vertebatur et pendebat vertiturꝫ adhuc et pendet quoad prolationem sententiæ nostræ definitivæ indecisa Partibus prædictis per earum Procūres coram Nobis in Judicio h̃ime comparentibus Parteꝫ præfati Reverendi Patris ac Dni Dni Thomæ permissione divina Coveñ et Licheñ Episcopi justitiam fieri pro parte sua Parte vero præfati Dni Andream Hackett Justitiam etiam pro parte sua instanter res̃pe postulañ et peteñ Cumꝫ etiam quoddam Negotium Officii coram Nobis in Judicio inter Philippum Jacob Geñ partem idem Negotium promoventem ex una et præfatum Reverendum Patrem Thomam permissione divina Coveñ et Licheñ Ep̃um partem contra quam idem Negotium promovetur, vertebatur et pendebat vertiturꝫ adhuc et pendet quoad prolationem sc̃niæ nostræ Definitivæ indecisum Partibus prædictis per earum Procūres coram Nobis in Judicio h̃ime comparentibus Parteꝫ præfati Philippi Jacob promotoris Officii prædict Sententiam fieri pro parte sua, Parte vero præfati Reverendi in Christo ac Domini Domini Thomæ permissione divina Coveñ et Licheñ Episcopi justitiam etiam pro parte sua instanter postulañ et peteñ Ad nostræ Sententiæ sive nostri finalis decreti prolationem in causis sive Negotiis præd̃ ferend̃ sic duximus procedend̃ fore et procedimus in hunc qui sequitur modum. Quia in Processu prædictæ Causa Dilapidationis et ruinae invenimus Eandem fuisse P̃ Partes in eadem, com̃issam et relatam Arbitrio Reverendorum in Christo Patrum ac Dominorum Henrici permissione divina London Episcopi ac Willimi permis̃se divini Petriburgeñ Episcopi Arbitrorum hincinde electorum per eos audiend̃ et terminand̃, prout in Actis hujus Curiae Tenoris sequentis viz Die Sabbathi Septimo die Junii Anno Domini 1684^o coram veñli viro Domino Richardo Lloyd Milite et Legum Doctore Surrogato venerabilis et egregii viri Domini Roberti Wyseman Militis et Legum Doctoris Almae Curiae Cantuař de Archibus London Officialis principalis legitime constituti in Camerâ dicti Dni Richardi Lloyd infra Hospitium Dominorum Advocatorum London situať p̃sente Thoma Tyllott Notario Publico. Dominus Episcopus Licheñ et Coveñ coñ Dominum Hackett in causa Dilapidationis Francklyn Exton. Quibus die et loco comparuerunt personař dictus Reverendus in Christo Pater ac Dominus Dominus Thomas permissione divina Licheñ et Coveñ Ep̃us et c̃us Dominus Andreas Hackett Miles et expressè consenserunt ut hac causa sive Negotium referatur arbitrio Reverendi in Christo Patris ac Domini Dni Henrici permissione divina London Episcopi et Reverendi in Christo Patris ac Dni Dni Willimi permissione divina Petriburgeñ Episcopi Arbitrorum hincinde indifferenter electorum per eos audiend̃ et terminand̃ in vel ante Vicessimũ quantum diem mensis instantis Junii et ut interim omnis processus in hac causa sistatur, et ut hac causa continuetur in statu quo nunc existit usꝫ ad et in decem dĩs post finalem Auditionem istius causæ per dictes Arbitros casu quo iidem Arbitri post auditionem ejusdem quoad decisionem et determinationem ejusdem in unam et eandem sententiam non

consenserint, et partes prædictæ respective consenserunt ut decisio et determinatio istius causæ quæ fuerit per dictos Arbitros facta et in Scriptis redacta et eorum manibus rescripta subscripta per sententiam definitivam Dni Judicantis hujus Curiae ejusve Surrogati ferendæ confirmetur et ratificetur Et ut nulla Appellatio ex aliqua parte ab eadem facta interposita aut prosecuta fuerit et ut omnes partes prædictæ eidem sententiæ consentiant et omni Appellationi ab eadem renuncient, Thos: Litch: et Co: Andr: Hackett. Ita testor Thos: Tyllott Notarius Publicus, liquet et apparet. Et quia etiam invenimus in processu præfati Negotii Officii dictum Negotium fuisse per præfatum Philippum Jacob promotorem dicti officii cum consensu Reverendissimi in Christo Patris ac Dni Dni Wilhelmi providentia divina Cantuarien Archiepiscopi totius Angliæ Primatis et Metropolitanis ac per dictum Reverendum Patrem Thomam permissione divina Coveñ et Licheñ Episcopum commissum et relatum arbitrio dictorum Reverendorum Patrum Henrici permissione divina Londoñ Episcopi ac Willimi eadem permissione Petriburgeñ Episcopi Arbitrorum hincinde electorum per eos audiendæ et terminandæ prout in Actis hujus Curiae tenoris sequentis viz Die Jovis Vicesimo secundo die mensis Maii Anno Domini 1684, inter horas tertiam et quintam Pomeridianas ejusdem diei coram venerabili et egregio viro Domino Richardo Lloyd Milite Legum Doctore Surrogato venerabiles et egregii viri Domini Roberti Wyseman Militis etiam et Legum Doctoris Almae Curiae Cant de Archibus Loudon Officis prius constituti in Camera dicti Domini Richardi Lloyd infra Hospitium Dominorum Advocatorum de Archibus Londoñ situat præfate Thoma Tyllott Notario Publico &c. officium Domini promotum per Philippum Jacob Geñ contra Reverendum in Christo Patrem Thomam permissione divina Licheñ et Coveñ Episcopum Exton ffranklin. Quibus die horis et loco comparuerunt personarum præfate Philippus Jacob promotor officii venerabilis et egregii Viri Domini Roberti Wyseman Militis Legum Doctoris Domini Judicantis hujus Curiae in hoc Negotio et dictus Reverendus in Christo Pater Thomas permissione divina Licheñ et Coveñ Episcopus Et tunc dictus Philippus Jacob promotor antedictus tam nomine suo quam ex consensu Reverendissimi in Christo Patris ac Domini Domini Wilhelmi providentia divina Cantuariensis Archiepiscopi Et dictus Reverendus in Christo Pater Dnus Thomas permissione divina Licheñ et Coveñ Episcopus expresse consenserunt ut hoc Negotium referatur Arbitrio Reverendi in Christo Patris ac Domini Henrici permissione divina Londoñ Episcopi et Reverendi in Christo Patris ac Dni Dni Willimi eadem permissione Episcopi Petriburgeñ vel in ejus absentia Reverendi in Christo Patris ac Domini Domini Francisci eadem permissione Roffeñ Episcopi Arbitrorum hincinde indifferenter electorum per eos audiendæ et terminandæ in vel ante Vicesimum quartum diem Mensis Junii immediate proximo sequentem et ut interim omnis processus in hac causa sistatur et ut hac causa continuetur in statu quo nunc existit usque ad et in decem dies post finalem auditionem istius Negotii per dictos Arbitros casu quo iidem Arbitri post auditionem ejusdem quoad decisionem et determinationem ejusdem in unam et eandem sententiam non consenserint Et dictus Philippus Jacob tam nomine suo quam ex consensu dicti Reverendissimi in Christo Patris ac Domini Domini Wilhelmi providentia divina Cantuarien Archiepiscopi, et dictus Reverendus in Christo Pater et Dominus Dominus Thomas permissione divina Licheñ et Coveñ Episcopus respective consenserunt ut decisio et determinatio istius causæ officio quæ fuerit per dictos

AUTHORITIES.

AUTHORITIES. Arbitros facta et in Scriptis redacta et eorum manibus respe subscripta per sententiam definitivam Domini Judicantis hujus Curiae ejusvo Surrogati ferendam confirmetur et ratificetur et ut nulla appellatio ex aliqua parte ab eadem facta interposita aut prosecuta fuerit et ut omnes partes praedictae eidem sententiae consentiant et omni appellacōi ab eadem renuncient. Philip. Jacob. Tho: Litch et Co: Ita testor Tho: Tyllott No^{us} Pub^{us}. liquet et apparet. Et quia p̄terea Invenimus dictos Reverendos Patres per quoddam judicium Laudum Decisionem et Determinationem eorum manibus et sigillis respective subscribē et sigilla^{re} et penes Registrum hujus Curiae remanēnē dicē Causas sive Negotia infra Tempus eis in dictis Actis limitatum audivisse et finaliter determinasse Cujus quidem Judicii Laudi et Decisionis sequitur et est talis, viz., To all Christian People to whome this present writing indented shall come Henry Lord Bishop of London and William Lord Bishop of Peterborough, send greeting. Whereas divers controversies and debates in law heretofore have been had, moved, and yet are depending between Doctor Thomas Wood Lord Bishop of Coventry and Litchfield on the one part and S^r Andrew Hackett of Moxull in the County of Warwick Knight Executor of the Last Will and Testament of Doctor John Hackett late Bishop of Coventry and Litchfield on the other part And whereas divers Articles have been exhibited by Philip Jacob of the Parish of Lambeth in the County of Surrey Gentleman in the Court of Arches against the said Dr. Thomas Wood the present Lord Bishop of Coventry and Litchfield, And whereas the said Partyes (that is to say) Doctor Thomas Wood Lord Bishop of Coventry and Litchfield S^r Andrew Hackett Knight and Philip Jacob Gentleman for the appeasing and full determining of the said Controversies and Law suites have by consenting to two Acts of Court hereunto annexed voluntarily agreed and submitted to the Arbitration Award Judgement and determination of the said Right Reverend Father in God Henry Lord Bishop of London and William Lord Bishop of Peterborough without any Appeale as appeares more at large from the said Acts of Court hereunto annexed And whereas the said Right Reverend fathers in God Henry Lord Bishop of London and William Lord Bishop of Peterborough Arbitrators indifferently Chosen by the said Partyes have in pursuance of the said Acts of Court accepted of the Reference to them made and mett divers times in pursuance of it and heard the Learned Councell on all sides and between all the Partyes herein mentioned, Now know Yee That Wee Henry Lord Bishop of London and William Lord Bishop of Peterborough taking upon us the Charge of the said Reference arbitram^t and Judgement betwene the said Partyes and having heard the sayings allegations and proofes of all the said partyes concerning the premisses and minding to sett them at unity and friendshipp concerning the same Doe thereupon make and publish this our Award Arbitrament and Judgment concerning the premisses in manner and forme following viz^t First. Imprimis Wee doe order and award that the said S^r Andrew Hackett shall pay or cause to be well and truely paid the summe of Fourteene Hundred Pounds of lawfull money of England into the hands of S^r Richard Lloyd Knight Doctor of Lawes and Surrogate to the officiall of the said Arches Court, or of such person as his Grace the present Lord Archbishop of Canterbury shall direct within the space of three months next ensueing the publication of this Award and the Sentence of the Court thereupon for and towards the rebuilding the two Palaces or Mansion houses belonging to the

Bishopricke of Coventry and Litchfeild (That is to say) For the rebuilding of the Palace in or neare Litchfeild Close and the Castle of Eccleshall which summe soe pay'd and deposited as aforesaid shall be layd out and expended for the uses aforesaid by the direction and approbation of the most Reverend ffather in God William by divine Providence the present Lord Arch Bishop of Canterbury his Grace or of the Lord Arch Bishop of Canterbury for the time being, Secondly Wee order and award that the said Dr. Thomas Wood the present Lord Bishop of Coventry and Litchfeild shall pay or cause to be pay'd the summe of Two thousand six hundred pounds of lawfull money of England into the Hands of the said S^r Richard Lloyd or of such person as his Grace the present Lord Arch Bishop of Canterbury shall direct and approve of & that within the space of three moneths next ensuing the publication of this award, and the sentence thereupon, for and towards the rebuilding his two Palaces (that is to say) The Palace of Litchfeild and the Castle of Eccleshall which summe soe pay'd and deposited shall be layd out and expended upon the rebuilding of the Palaces aforesaid by the directions and approbation of the present Lord Arch Bishop of Canterbury or of the Lord Arch Bishop of Canterbury for the time being. Thirdly Wee doe order and award that Doctor Thomas Wood the present Lord Bishop of Coventry and Litchfeild shall over and above the said summe of Two thousand six hundred pounds pay all Costs and Charges that Philip Jacob the Plaintiffe or promoter of the office against him hath been att which Costs Wee tax at the summe of sixty five pounds lawfull money of England to be paid to the said Philip Jacob or his Procurator within the time aforesaid. Fourthly, Wee doe order and award that the said S^r Andrew Hackett shall over and above the said summe of fourteen hundred pounds pay unto the said Dr. Thomas Wood Lord Bishop of Coventry and Litchfeild the summe of One hundred and twenty pounds of lawfull money of England for all costs and charges that he hath lay'd out and expended in the said Arches Court of Canterbury, within the time aforesaid. Fifthly. Wee doe further Judge and determine that Doctor Thomas Wood Lord Bishop of Coventry and Litchfeild bee suspended from his Episcopall Office and ffunction and the benefits profits and Pquisites of his Bishopricke untill such time as he the said Doctor Thomas Wood the present Bishop of Coventry and Litchfeild make a full and becoming submission to his Grace the present Lord Archbishop of Canterbury for his Absence from his Diocesse and the neglect of his duty and all other crimes alledged and proved against him in the Depositions read before us and exhibited in certaine Articles by Philip Jacob Gentleman against him the said Lord Bishop of Coventry and Litchfeild. Lastly Wee doe adjudge and determine that all the partyes mentioned in this Arbitration shall upon their compliance with, and submission to, and performance of this award, (and not otherwise) seale and deliver generall releases mutually to each other for the absolute and finall discharging of each other of all suites, Actions, Claimes, and all other differences and demands whatsoever from the beginning of the world untill the date of these presents. In Wittnesse whereof wee the Arbitrators chosen indifferently by and between the said partyes have hereunto putt our hands and seales this eighteenth day of June in the six and thirtieth yeare of the reigne of our Sovereigne Lord Charles the Second of England Scotland France and Ireland King defender of the faith &c. and in the yeare of our Lord 1684. H. London, William Peterborough. Signed sealed and delivered in the

AUTHORITIES.

AUTHORITIES. presence of Will : Trumbull Tho : Tyllott No^r. Pub^r. Ideireo Nos Richardus Lloyd Miles et Legum Doctor Index antedictus perfectis prædictis Actis necnon præfat^o Judicio Laudo Decisione et terminatione p^rfat^o Reverendorum Patrum ac Dominorum Henrici permissione divina Lond^on^o Episcopi et Willimi permissione divina Petriburgen^o Episcopi Arbitro^r præd^o Idem Judicium Laudum Decisionem et determinationem omnia^q et singula contenta in eisdem ad omnem juris effectum ratificamus et confirmamus per hanc n^ram sententiam definitivam sive hoc nostrum finale decretū quam sive quod ferimus et promulgamus in his Scriptis.

RICH : LLOYD

Sur :

Lecta fuit hac snia per Dnum Rich^um Lloyd Sar^um &c in Aula comuni infra hospitium dⁿorum Advocatorū &c. vicesimo Septimo Junii 1684^o p^rntibus Carolo Hedges Stephano Brice, ffishero Littleton Georgio Oxenden et Georgio Bramston legum d^roribus Advocatis &c. et francisco Nixon Rob^oto Chapinan Godfrido Lee Jo^he Miller et Jo^he Lovell noris publicis peurbis &c.

[Endorsed] Dnus Ep^us Lichen cou Dnum Hackett et officium Dni p^rmo^r Jacob. Senten^{ti}.

27 Junii, 1684^o.

APPENDIX 22.

HACKET, BISHOP OF DOWN AND CONNOR.

A.D. 1694.

In 1672 Thomas Hacket, a native of England, but a graduate of Dublin, beneficed in Hertfordshire, and a chaplain of King Charles II. had been promoted to the diocese of Down & Connor. But for the twenty succeeding years he had been notoriously negligent of his pastoral office, and for the most part absent from his sphere of duty, and resident in England. His diocese suffered the natural consequences of his absence and neglect, in the deteriorated condition of his clergy. A disposition appears to have at one time existed, in a quarter not distinctly indicated, to extend an unmerited and unbecoming indulgence to this delinquency. This is intimated in the answer to a letter of congratulation from Primate Boyle, on the elevation of Dr. Tillotson to the archbishopric of Canterbury, wherein the archbishop says, "As to your former letter, dated three days before, concerning a coadjutor for the bishopric of Down, I never heard the least syllable of it : and, if any such were designed, I would oppose it to my power, as an example of very ill consequences. I think it much fitter to have the bishopric made void, for the bishop's scandalous neglect of his charge."

This letter is dated June 11, 1691. But notwithstanding the decided language of Archbishop Tillotson, and the evident propriety and urgency of the intended proceeding, two years and a half elapsed before any movement was made in the affair. Then, however, a royal commission was issued, Dec. 19, 1693, addressed to the Bishops of Meath, Dromore, and Derry, for inquiring into his alleged neglect : and the commissioners, or any two of them, were empowered by the king and queen to "exercise all manner of jurisdictions, privileges, and pre-eminences, touching any spiritual or ecclesiastical jurisdiction in the diocese of

Down and Connor, and to visit and reform all errors, abuses, offences, contempts, and enormities, committed or permitted by the said Bishop Hackett, or any of the clergy in the said diocese." Wiseman, bishop of Dromore, was prevented by bad health from acting. But the commission was executed by Dopping, bishop of Meath, and King, bishop of Derry, who, on the 13th of March, 1694, suspended him from the exercise of his office; and on the 21st of the same month deprived him for simony in conferring ecclesiastical benefices, and for other grievous enormities committed in the exercise of his jurisdiction.—*Mant's History of the Church of Ireland, Vol. II., pp. 41, 42.*

AUTHORITIES.

APPENDIX 23.

BINGHAM'S OPINION.

"But here I must observe that this power of Metropolitans was not arbitrary; for though no Bishop was to be elected or advanced without their consent, yet they had no negative voice in the matter, but were to be determined and concluded by the major part of the Provincial Synod. For so the Council of Arles decreed that if there arose any doubt or hesitation betwixt the parties the Metropolitan should side with the greater number. And the Council of Nice to the same purpose:—If two or three, out of a contentious humour, shall oppose the common election, duly and regularly made according to the canons of the Church, in this case let the majority of voices prevail."

"Their great office was to preside over their provincial Bishops, and if any controversy arose among them to interpose their authority to end and decide them. As also having the accusations of others and complaint of injury done them by their own Bishops, from whom there was liberty always to appeal to their Metropolitan. Thus, in Africa it was ordained by the Council of Melevis that if two Bishops disputed about the bounds of their dioceses the Metropolitan should appoint a committee of Bishops to hear and determine their controversy. If a presbyter or deacon was excommunicated by his own Bishop, the Council of Sardica allows him liberty to appeal to the Metropolitan of his province; or, if he were absent, to the Metropolitan of the next province, to desire a new hearing of his cause. In such cases as these the Metropolitan had three ways of proceeding. Either, first, he was to appoint a select number of Bishops to be Judges, which was the practice of Africa, where such Judges were therefore called *iudices electi*, and their number assigned to be twelve, if a Bishop's cause was to be tried before them; or, secondly, he was to refer the matter to a provincial synod, which seems to have been the general practice, when those called the Apostolical canons were made; one of which orders that when a Bishop is accused he shall be convened before a synod of Bishops; another says the Primate shall do nothing without the consent of all the other Bishops; so concord will be preserved, and God will be glorified; and another, twice a year let there be a synod of Bishops to examine the doctrines of religion and determine all ecclesiastical controversies that may happen; but, thirdly, by the Justinian law, a Metropolitan has power to hear the cause himself, on appeal, without a synod; yet whether he could

AUTHORITIES. proceed so far as to depose a Bishop by his sole authority is questioned. Spalatensis gave some instances of Bishops who were deposed by their Metropolitans, but for aught that appears it was done in a synod; and, whether it was or was not, matters not much; for still, in all cases, by the same law of Justinian and the canons, there lay an appeal from the Metropolitan to a provincial synod, of which he was only president, or moderator, and director of business in it.” —*Bingham's Antiquities of the Christian Church, Bk. II., Ch. 16, ss. 14, 16.*

APPENDIX 24.

HOOKE'S OPINION.

“Archbishops were chief among Bishops, yet Archbishops had not over Bishops that full authority which every Bishop had over his own particular clergy; Bishops were not subject unto their Archbishops as an Ordinary, by whom at all times they were to be judged, according to the manner of inferior pastors, within the compass of each diocese. A Bishop might suspend, excommunicate, depose, such as were of his own clergy without any Bishop's assistance; not so an Archbishop the Bishops that were in his own province, above whom divers prerogatives were given him, howbeit no such authority and power as alone to be judge over them. For as a Bishop could not be ordained, so neither might he be judged by any one only Bishop, albeit that Bishop were his Metropolitan.” —*Hooker's Ecclesiastical Polity, Bk. VII., Ch. 16, s. 7.*

APPENDIX 25.

TRIAL OF BISHOPS.

DE DENUNCIATORIBUS CRIMINUM.

Sint autem in quolibet Decanatu duo vel tres viri, Deum habentes præ oculis, qui excessus publicos Prælatorum, et aliorum Clericorum, ad mandatum Archiepiscopi, vel ejus Officialis, ipsis denuncient.—*Constitution of Archbishop Edmund, Lyndwood's Provinciale, Appendix, p. 30.*

A.D. 1217.

NE PÆNITENTIA INJUNGATUR SINE RESTITUTIONE.

... Sint etiam in quolibet Decanatu duo vel tres viri Deum præ oculis habentes, qui excessus publicos Prælatorum et aliorum Clericorum, ad mandatum Episcopi, vel ejus Officialium, ipsis denuncient.—*Constitution of Bishop Poore of Salisbury, Spelmann's Concilia, Vol. II., p. 145.*

A.D. 1220.

DE INQUISITORIBUS.

Item in quolibet Decanatu, duo vel tres viri Deum præ oculis habentes sint, qui excessus publicos Prælatorum, Personarum, et aliorum Clericorum, ad

mandatum Episcopi vel ejus Officialium ipsi denuncient, per quos etiam publicè AUTHORITIES.
pœnitentes de eodem Decanatu ad clavem pœnitentiæ admittantur: et ad
prædictos Confessores in Ecclesiâ Dunelmensi constitutis transmittantur cum
litteris, genus et quantitatem peccati continentibus, in capite jejunii et alio
tempore competenti.—*Constitution of Bishop Richard of Durham, Spelman's
Concilia, Vol. II., p. 170.*

Lyndwood's Commentary on the Constitution of Edmund is—

“Prælatorum, sc. Episcoporum qui in quantum Suffraganei sunt, subiacent
immediate Archiepiscopo, et eius officiali, et etiam officiales ipsorum Episcoporum,
quod dic ut legitur.”

APPENDIX 26.

LUCY v. WATSON, BISHOP OF ST. DAVID'S.

DATES OF PROCEEDINGS (1).

- 1695, Aug. 23.—Citation issued.
 „ Oct. 24.—Watson appears, but claims his privilege.
 1696, Mar. 7.—Lucy petitions the House of Lords to refuse the privilege.
 „ „ 20.—Lords reject the petition on Watson undertaking to waive his
 privilege.
 „ April 2.—Articles.
 1699, Feb. 20.—Watson protests to the jurisdiction on the ground that the
 offences alleged are mostly temporal. Protest overruled.
 Appeal.
 „ Mar. 13.—Commission of Appeal issued.
 Easter Term.—Prohibition moved for on the grounds (1) that the case should
 have been brought in the Arches Court; (2) that the case
 is one of temporal cognizance. Refused. App. 27, *post*.
 „ June 8.—Delegates dismiss appeal.
 „ Aug. 3.—Sentence of deprivation.
 „ „ 5.—Appeal from sentence.
 „ „ 19.—Suspension, pendente lite.
 „ Nov. 23.—Watson resumes privilege.
 „ Dec. 6.—House of Lords refuses leave to resume privilege.
 1700, Jan. 29.—Prohibition moved for on the ground that the Archbishop
 had no jurisdiction to deprive. Refused. See App. 27, *post*.
 „ Feb. 13.—Petition to Lords against refusal of Prohibition. Rejected.
 „ „ 16.—Appeal to delegates comes on for hearing, “The Council (sic)
 for the Bishop of St. David's, insisting that the Arch-
 bishop had not jurisdiction in this cause; the Court
 having considered the arguments on both sides, and de-
 bated the matter, is unanimously of opinion that the
 Archbishop had, and this Court hath, jurisdiction in this
 cause, and doth order the Council to proceed in the
 same.”—Delegates Assiguation Book.

(1) Compiled by A. B. Kempe, Esq.

- AUTHORITIES.** 1700, Feb. 22.—Delegates confirm sentence.
 " " 22.—Petition for Writ of Error.
 " " 25.—Writ of Error sealed.
 " Mar. 2.—Writ of Error refused by Lords on the ground that none can be brought in cases of refusal of Prohibition.
 " " 11.—Motion in House of Lords for petition to Crown not to fill up the Bishoprick. Abandoned.
 Watson subsequently excommunicated and arrested for non-payment of costs.
 1702, Michaelmas.—Writ de excommunicato capiendo quashed.
 Information of Intrusion exhibited against Watson in Exchequer. Judgment against him.
 Appeal to Exchequer Chamber. Judgment confirmed.
 1704.—5.— Writ of Error in House of Lords. Dismissed for want of prosecution.

APPENDIX 27: PART I.

1700.
January.

EPISCOPUS ST. DAVID *v.* LUCY. (1)

A prohibition does not lie to the spiritual court, for proceeding contrary to the canon law. The right of deputation is incident to the right of visitation. S. C. Salk. 134.

An archbishop may by the common law deprive any of his suffragan bishops. S. C. Salk. 134.

The same persons may be appointed commissioners' delegates upon an appeal from a definitive sentence in the spiritual court as were appointed on an appeal from an interlocutory decree.

A prohibition cannot in strictness be moved for until after the suggestion is entered on the roll. Semb. acc. 5 Mod. 435.

A mandamus does not lie to the spiritual court to admit allegations.

Error does not lie upon the refusal of a prohibition. S. C. Salk. 136.

The reason why a bishop is a lord of parliament is because he holds his temporalities by barony. Vide Co. Litt. 97 a. 70 b. 13th Ed. n. 2. 1 Bl. Com. 155, 156.

PENDING the suit against the bishop of St. *David's* before the archbishop, he appealed to the delegates; and pending his appeal, he moved in *B. R. Pasch.* eleventh of this king, for a prohibition to be directed to the delegates upon divers suggestions, which prohibition was denied (2). After which the commissioners

(1) The following is the report of the proceedings in the Court of King's Bench, A.D. 1700, reported 1 Ld. Raym. 539.

1699.

(2) The following is the material portion of the previous decision of the King's Bench (reported 1 Lord Raymond, 447):—

THE BISHOP OF ST. DAVID'S *v.* LUCY.

Lucy promoted a suit ex officio, &c., before the Archbishop of Canterbury against the Bishop of St. David's upon several articles for simony and other of-

delegates over-ruled his appeal, and the archbishop pronounced sentence of deprivation against him; from which sentence he appealed to the commissioners delegates; and seeing that they were of opinion to affirm the sentence, he moved by his counsel for a prohibition now to be granted by this court to the commissioners delegates, to stay their proceedings in the appeal from the sentence of the archbishop; upon a suggestion, 1. That by the canon law the archbishop alone could not deprive a bishop; and 2. That the delegates refused to admit his allegations; and the counsel for the prohibition argued, that the archbishop had not any authority over his suffragan bishops; that the bishops are lords of parliament, and so peers to the archbishop, and therefore he could not have authority over them, *quia par in parem non agit*; that there are no instances of such proceedings, nor hath this point been determined in our books;

AUTHORITIES.

fences. To which articles Dr. Thomas Watson, the Bishop of St. David's, put in his answer. And proof being offered on the part of the promoter, the bishop appealed to Commissioners, delegates. And pending the appeal he moved in the King's Bench for a prohibition, upon a suggestion that the matters contained in the articles were of temporal consance, &c. And at the beginning Sir Bartholomew Shower argued for the prohibition; that it does not appear that the Bishop of St. David's was cited to appear in any court whereof the law takes notice; for the citation is, that he should appear before the Archbishop of Canterbury, or his Vicar-General, in the hall of Lambeth House, to answer, &c., which is not any court whereof the law takes notice. For the archbishop has the same power over his suffragan bishops, as every bishop hath over the clergy of his diocese; but no bishop can cite the clergy before himself, but in his Court. And, therefore, the citation ought to have been here, to appear in the Arches, or some other court of the archbishop, &c. But to this it was answered by Wright, King's Sergeant, that without doubt the archbishop had jurisdiction over all the clergy, as well bishops as others, within this province. And for that he cited the case of Dr. Wood, Bishop of Litchfield and Coventry, who in the year 1687 was suspended by Archbishop Sancroft for dilapidations, and the profits of the bishoprick were sequestered, and the episcopal palace was rebuilt out of them; and he died under that sequestration. He cited also the case of Marmaduke Middleton, Bishop

of St. David's, who upon the 8th of May, in the year 1582 was suspended by the High Commissioners for misapplication and abuse of the charity of Brecknock (which is one of the crimes of which this bishop is accused): Whitgift's Register, 177. And though that suspension was made by the High Commission Court, yet that will make no difference; because the High Commissioners have not any new jurisdiction; or greater, than the archbishop by 1 Eliz. c. 1, s. 18. And, Holt, Chief Justice, said, that the admitting of that point of the jurisdiction to be disputed, would be to admit the disputing of fundamentals, which the counsel of the other side attempt to subvert, not duly considering the respect due to the Primate and Metropolitan of England; for the Archbishop of Canterbury has without doubt provincial jurisdiction over all his suffragan bishops, which he may exercise in what place of the province it shall please him; and it is not material to be in the Arches, no more than any other place; for the Arches is only a peculiar, consisting of twelve parishes in London, exempt from the Bishop of London, where the Archbishop of Canterbury exercises his metropolitical jurisdiction; but he is not confined to exercise it there. And the citation is here, to appear before the archbishop himself, or his vicar-general, who is an officer of whom the law takes notice; for the vicar-general in the province is of the same nature as the chancellor in every particular diocese; and the Dean of the Arches is the vicar-general of the archbishop in all the province.

AUTHORITIES and therefore being a matter of great consequence, it ought to be settled by mature deliberation. That the deprivations of bishops, which have been heretofore, have been by the ecclesiastical commission, or in convocation, or by act of parliament; and therefore by *Littleton's* rule, s. 108. *Co. Litt.* 81. a. b. if such a thing might have been done, it should be intended, that it would have been put in practice before this time. That though the archbishop may visit and censure the bishops, yet it does not follow that he can deprive; because deprivation does not follow the visitatorial power, as a necessary consequence. That the law has provided for the temporalities, as 14 *Ed. 3. st. 4 c. 3.* that their temporalities shall not be seized into the king's hands, but upon lawful cause, and judgment thereupon given according to the law of the land; and 25 *Ed. 3. st. 3. c. 6.* that their temporalities shall not be seized for a contempt; and that in the case of the archbishop of *York* and the bishop of *Durham*, in *Riley's Placita Parliamentaria* 135. there is a distinction made between their temporal state and their ecclesiastical; and the archbishops have no authority over them as to their temporal state; and therefore since this sentence of deprivation takes away their temporalities from them, over which they have no jurisdiction, the king's bench will grant a prohibition, to examine into the jurisdiction of the archbishop, to the end that if he has not such jurisdiction, the bishop may not be deprived of his temporalities. Another objection was made, that the same commissioners, who were in the commission of delegates upon the appeal *propter gravamen*, were commissioners in the commission upon the appeal to the merits, where the whole matter, as well the *gravamen* as the rest of the cause, might be urged; and so they would be judges in the same cause which they had determined against the bishop upon the former appeal, which was unreasonable. *E contra*, it was argued, by the attorney general and the other counsel for the promoter against the prohibition, that the suggestion for the prohibition was founded only upon the canon law, and not upon the common law or any act of parliament; and therefore very proper before the delegates upon the appeal, but not any ground for a prohibition. And as to the objection that the bishop is a lord of parliament, that is only in respect that he holds his temporalities by barony, which temporalities are annexed to his bishoprick, and therefore being deprived of the bishoprick, he will in consequence be deprived of the temporalities, and of his seat in parliament. There is not any other jurisdiction for such purpose, for the convocation is more properly a legislative than an executive authority. If the archbishop has no such authority, what is the meaning of the exception in 23 *Hen. 8. c. 9. s. 3.* that bishops may be cited out of their diocese? The act as to clergymen in general was reasonable, because there is a jurisdiction within the diocese, to which they are subject; but the exception was of necessity in case of bishops, because they were not subject to any other jurisdiction than that of the archbishop. Before the statute of 16 *Car. 1. c. 11.* which took away the high commission court, which statute is since confirmed by 13 *Car. 2. st. 1. c. 12.* they proceeded before the commissioners appointed by virtue of the power given to the queen, by 1 *El. c. 1.* and the bishops were deprived by them, because it was a more expeditious way of proceeding; but now by the said acts the old jurisdiction is restored, as it was upon 26 *H. 8. c. 1.* And also upon 29 *Car. 2. c. 9.* which takes away the writ *de haeretico comburendo*, there is a saving for the jurisdiction of archbishops and bishops, &c.

Wright king's serjeant of the same side urged, that a power of deprivation was incident to the visitatorial power; and the case in *Ryley* 186, admitting the power of the archbishop in spiritual cases, it must follow of consequence, that he has a power of deprivation; because deprivation is the punishment proper for some cases.

AUTHORITIES.

This matter was moved several times at the bar. And the whole court was of opinion, that the prohibition should not be granted. And as to the authority of the archbishop, *Holt* chief justice said, that there are archbishops, who have authority over their suffragan bishops; and there are primates, who are superior to them. The archbishop of *Spalato* says in his book, that an archbishop has the same authority over his suffragan bishops, that the bishop has over his inferior clergy; and though there may be a co-ordination *jure divino*, yet there is a subordination *jure ecclesiastico qua humana*; not of necessity from the nature of their offices, but for convenience. And for what other purpose have archbishops been instituted by ecclesiastical constitutions? The power of an archbishop was very great here in *England* anciently; the same jurisdiction of supremacy as the patriarchs of *Constantinople*, &c. The pope used to call him, *alterius orbis papam*, and he exercised the same jurisdiction with him. *Theodore*, who was archbishop soon after the first constitution, not more than the fourth, fifth, or sixth, of *St. Austin*, deprived *Winifred* bishop of *York*, for the said see was not then metropolitical, but subject to the archbishop of *Canterbury*; and yet at the same time there was a council held; and *Bedu* commends *Theodore* for it. But afterwards in the time of *Henry I.* and king *Stephen*, the pope usurped the authority of the archbishops; in exchange for which they became *legati nati* of the pope. See for this *Roger Twisden de Schismate*; and that is the reason why this practice cannot be found to have been put in use for so long time; for when the archbishop had divested himself of his supremacy, and the pope had gained all his jurisdiction, the bishops being created by the pope, and consequently having better interest at *Rome*, at least as good as the archbishop, it was in vain to intermeddle. And if there are any instances found, of bishops who were deprived in the said time, it was where the archbishop had more interest with his holiness, and so the bishop perceiving it acquiesced. But at this day, by the Act of 24 *H. 8. c. 12.* this jurisdiction is restored. It was always admitted, that the archbishop had metropolitical jurisdiction, and the bishops swear canonical obedience to him; and where there is a visitatorial power, there is no reason to question the power of deprivation; for the same superiority, which gives him power to pass ecclesiastical censures upon the bishops, will give him power to deprive, it being only a different degree of punishment for a different degree of offence. This appears upon the statutes 26 *H. 8. c. 1.* and 1 *El. c. 1.* where, notwithstanding that there is not one word of deprivation, but only to visit, repress, redress, reform, correct, and amend; yet they have been construed to give a power of deprivation. And by virtue of the 26 *H. 8. c. 1.* *Bonner* was deprived. *Dr. Burnett* the bishop of *Salisbury* in his book of the reformation believes that *Bonner* was deprived because he had accepted letters patent of *Henry 8.* to the bishop; but that cannot be a legal reason, for he being bishop before for his life, acceptance (1) of a patent *durante beneplacito* could not determine it. So the high commissioners, by virtue of the act of 1 *El. c. 1.* deprived; and yet there is not one word of deprivation in the

(1) Vide Co. Litt. 16. b. 13th Ed. n. 2.

AUTHORITIES. said act, but only visit, &c. as in the said act of 26 *II.* 8. c. 1. And the reason, that it is an inherent prerogative in the king, is but an additional reason; for it is plain, that before the statute of *Elizabeth* the king could not have granted a commission for redressing and reforming ecclesiastical matters, and therefore the power that they had proceeded from the said act; for the king exercises his ecclesiastical supremacy by his ecclesiastical judges, as he exercises his temporal by his temporal judges. And he said, that he did not know any subordinate visitatorial power in any case but that of an archdeacon, which is a subordinate jurisdiction, and for informing the bishop, and he is called *oculus episcopi*. But where there is an unlimited power of visitation, there must be of consequence a power of deprivation. This jurisdiction of the archbishop has notice taken of it in acts of parliament. Because that the act of 16 *Car.* 1. c. 11. which took away the high commission court, was thought to have lessened the jurisdiction of archbishops and bishops; therefore it was repealed *quoad*, by 13 *Car.* 2. st. 1. c. 12. And the act of 29 *Car.* 2. c. 9. which takes away the writ *de haeretico comburendo*, has a saving of the jurisdiction of the protestant archbishops and bishops. If issue was joined (as his brother *Gould* justice well observed) in a real action upon the deprivation of a bishop, to whom could the court write, unless to the archbishop? In case of deprivation of a parson, the court writes to the bishop to certify. Then if the archbishop had such authority, as it is plain he had, by what law is he restrained? Mention is made of an old canon of *Antioch*, but that was never received in *England*. And if the non-usage should be an argument against it, which proceeded from a particular reason, as appears before, it would also be a reason why bishops should never be deprived at all, because no bishop was ever deprived from the time of *Henry* II. until *Henry* VIII. and no other jurisdiction can be shewn, to which they are subject: for all the same objections may be made to the power of the convocation; for a convocation has no power over a peer *qua* peer; but the objection will not prevail for their peerage is but accessory, and they have their temporalities as they are bishops. And in ancient times there were abbotts, who were lords of parliament, and yet their visitors had power to deprive them. So that if any ecclesiastical jurisdiction is allowed to be over them, this objection will fail. And in fact it signifies nothing, because their peerage is but grafted upon their being bishops. And the notion of the deprivation of bishops by the convocation is new, and started by Sir *Bartholomew Shower*, and (by him) the convocation has not any such power: and if there was such power in the convocation, it is presumable that care would have been taken in the act of *Henry* 8. that there should be an appeal from them. Farther, it seems by the writ *de haeretico comburendo*, *F. N. B.* 269. that what is done in convocation, is the act of the archbishop, and only the consent of the rest of the clergy in convocation. He agreed, that (1) the spiritual court has not any jurisdiction in case of freehold; but in this case the freehold follows the person being under such capacity. He agreed also, that the spiritual court cannot (2) examine institution after the induction, because that makes a plenarty; and therefore the declaring of institution to be void, would be avoiding a temporal act. But these instances are not like the present case. The reason of the case in *Ryley* was plainly because the archbishop punished him for matter in which the bishop of *Durham* acted in his temporal capacity as count palatine of

(1) R. acc. ante 212. Str. 1013. Vide Com. Prohibition. F. 2. 2d. Ed. vol. 4. p. 492.

(2) R. Hob. 15.

Durham ; which appears by the question asked, whether the gaol was the gaol of the county palatine ? and whether it had not always been delivered by lay people ? And (by him) to question this authority of the archbishop, is to question the very foundations of the government. And *Gould* justice said, that in 2 *H.* 4. 10. *a.* where the ecclesiastical jurisdictions are enumerated, the account begins with archbishops. And it appears by our books, that bishops may be deprived for dilapidations, 11 *Co.* 49. *b.* 3 *Inst.* 204. 29 *Ed.* 3. 16. *a.* 2 *H.* 4. 3. *b.* And such deprivation seems to be by the archbishop ; for otherwise to whom should the court write ? For which reason it must be pleaded by whom it was done, as *Bro Deposition*, 5. The court cannot write to the convocation ; and it is strange, if the bishops are deprivable, that the law should place it at such a distance, as to refer it to the convocation. And in 1 *Roll. Abr.* 882. 10 *Vin.* 509. *G. pl.* 1. *Anselmus* archbishop of *Canterbury* is said to have deprived several prelates. And there is no case, where a person hath power of visitation, but he hath also power of deprivation, *F. N. B. tit. Prohibition*. But when there was such a summary way of proceeding before the high commission, it is no wonder if such a tedious proceeding before the archbishop was not used. But *Holt* chief justice said, that though he was fully satisfied in his opinion that the archbishop had such jurisdiction, yet he would not make that the ground of denying a prohibition in this case. The matter of the suggestion is, that the archbishop is restrained by the canon law from proceeding, &c., without assistance, &c. Now it must be, that the court take notice that the archbishop by the common law hath metropolitical jurisdiction, and for that purpose he was constituted ; that there are two in *England*, who are primates in their respective provinces ; and then they have sufficient jurisdiction, and being the judges, though perhaps by the canon law they ought to take other persons to their assistance, yet their proceeding without such assistance cannot be a ground for a prohibition. If in fact the archbishop extended his jurisdiction farther than he could by the rules of the common law, that might be a ground for a prohibition ; but where all the authority that he makes use of is no more than what the common law allows him ; but there are some ecclesiastical canons which restrain him from exercising the jurisdiction which he hath by the common law ; that is matter proper for the conusance of the delegates upon the appeal, but no ground to prohibit them from proceeding. And it is without precedent, to grant a prohibition to the ecclesiastical court, because they proceed there contrary to the canons. And *Gould* justice said, that (1) if a tortious judgment be given, that is proper matter for appeal, and not for prohibition. And of that opinion lord *Hobart* is expressly. And as to the objection concerning the commissioners of the commission of delegates, *Holt* chief justice said, that they upon a second appeal could not determine the *gravamen* at another time. And if the said objection should be allowed, where their course is, upon allowing the *gravamen* to retain the cause, there the archbishop might make the same objection, that they were not proper persons to be judges for the bishop, because they had determined the *gravamen* against the archbishop, and so they should not proceed at all, it being but the reverse of the said objection. And he was of opinion, that being appointed judges by a new commission, it was well enough. And the prohibition was denied by the whole court. And *Holt* chief justice ordered the counsel for the bishop to enter their

(1) Vide ante, 449, and the cases there cited. [This refers to the first application to the King's Bench.]

AUTHORITIES. suggestion upon record, and they would enter the reasons of the denial of the prohibition. And *Holt* said, that if the other party had insisted upon it, they could not have moved for a prohibition before their suggestion was entered upon the roll. Then Mr. *Montague* on behalf of the bishop moved the court, that they would grant a *mandamus* to the commissioners delegates, to admit the bishop's allegations. And he compared it to the cases where they grant *mandamuses*, to compel the granting of probates of wills and letters of administration. But *per Holt* chief justice, the king's bench cannot grant a *mandamus* to them, to compel them to proceed according to their law. Indeed *mandamuses* are grantable to compel probates of wills, because it concerns temporal right; and to compel the grant of letters of administration, because the statute directs to whom they shall be granted. But in the present case a *mandamus* was denied. *Ex relatione m^{ri} Jacob.*

Note; that after this denial of the prohibition, the bishop of St. David's petitioned the lord chancellor *Somers*, to have a writ of error upon this denial of the prohibition, who having some doubt, whether it would lie or not, referred it to the attorney general; who certified his opinion to be, that a writ of error would lie in this case. Upon which the suggestion was entered upon record, and the denial of the prohibition; and the writ of error was granted, and the whole record brought by the chief justice into parliament. And afterwards upon hearing of his opinion, the lords of parliament were of opinion, that a writ of error would not lie in this case. Note, that *Holt* chief justice told me, that if the lords had been of opinion, that the prohibition ought to have been granted, he never would have granted it.

APPENDIX 27: PART II. (1)

A.D. 1702.

LUCY v. BISHOP OF ST. DAVID'S.

QUEEN'S REMEMBRANCER MEMORANDA ROLL.

Michaelmas, 13 William III., mcix.

[Translation.]

[Portions in brackets are those cited to the Court.]

BRECON

Of judgment for the Lady Queen Anne delivered upon a demurrer joined upon the information exhibited by the Attorney-General of the Lord the King against Thomas Watson Professor of Sacred Theology and others for intrusion into several messuages lands and tenements in Christs Colledge in the County aforesaid parcel of the possessions of the Bishopric of St. David's being in the hands of the King by reason of the vacancy of the Episcopal See Aforesaid And of the judgment aforesaid affirmed by the Lord Keeper of the Great Seal and the Lord Treasurer upon a writ of error.

Be it remembered that Edward Northey Esquire Attorney-General of the Lord the King that now is who follows for the same Lord the King, present here in Court on the seventeenth day of November in this term, in his proper person gave it to be understood and informed for the same Lord the King, That whereas two messuages, five hundred acres of land three hundred acres of meadow four hundred acres of pasture and five hundred acres of furze and heath lands with appurtenances lying and being in Christ Colledge

in the County of Brecon aforesaid, parcel of the lands and possessions of the

(1) The following is a report of the proceedings in the Exchequer, A.D. 1702.

Bishopric of St. David's, on the first day of April in the twelfth year of the reign of the said Lord the now King and long before and always afterwards and thitherto were in the hands and possession of the said Lord the now King and of right have been and ought to be, in right of his crown of England by reason of the vacancy of the Episcopal See of St. David's, the same see then and as yet being vacant, as more fully appears of record in very many Records, Rolls and Memoranda of this Exchequer. Which same Thomas Watson, Professor of Sacred Theology, Edward Gwynne, clerk, Thomas Morgan, clerk, and William Williams, gentleman, not reverencing the laws of the same Lord the now King but intending and designing the disinherison of the same Lord the now King in the premises with force and arms, etc. on the aforesaid first day of April in the twelfth year aforesaid entered intruded and made ingress in and upon the possession of the premises of the said Lord the now King and the issues and profits thereof coming, received and had to their own proper use and as yet receive and have by that trespass and intrusion, from the same first day of April in the twelfth year aforesaid and hitherto continue in contempt of the said Lord the now King and against his laws whereof the aforesaid Attorney-General of the said Lord the now King, for the same Lord the King, seeks the advice of the Court in the premises, and that the aforesaid Thomas Watson, Edward Gwynn, Thomas Morgan and William Williams, may come here to answer to the said Lord the King of and to the premises. Upon which it was agreed that the aforementioned Thomas Watson, Edward Gwynn, Thomas Morgan and William Williams should be attached by their bodies wheresoever, &c. to answer to the said Lord the King of and to the premises. And it is commanded the sheriff of the said County of Brecon that he attach them, the aforementioned Thomas Watson, Edward Gwynn, Thomas Morgan and William Williams, in form aforesaid, So, &c. in the Octaves of St. Hilary, at which day the sheriff did not return the writ, yet the aforesaid Thomas Watson, Edward Gwynn, clerk, Thomas Morgan, clerk, and William Williams, gentleman, at the same day came here, by John Thompson, their attorney, and pray a hearing of the information aforesaid, and it is read to them, &c. Which letters being heard and understood by them, they complain that they by colour of the premises are gravely vexed and inquieted, and this unjustly because by protesting that the information aforesaid and the matters in the same contained are not sufficient in the law, and they are not bound nor by law of the land are they held to answer thereupon protesting also that elsewhere and long before the exhibiting of this information, to wit, in Easter term in the twelfth year of the reign of the said Lord the King a like information was exhibited to the same Court of Exchequer of the Lord the King, here, by Sir Thomas Trevor, knight, then Attorney-General of the said Lord the King, on behalf of the same Lord the King, against them, the same Thomas Watson, Edward Gwynn, Thomas Morgan, and William Williams, now defendants, of and for the self same intrusion in and upon the possession of the same Lord the King of and in the self same tenements with appurtenances above specified and supposed to be made by the same Thomas Watson, Edward Gwynn, Thomas Morgan, and William Williams, on the same first day of April in the twelfth year abovesaid and continued from the same day to the day of the exhibiting of that former information in the self same words in manner and form as in this information

AUTHORITIES.

AUTHORITIES. above it is supposed. And that the same Thomas Watson, Edward Gwynn, Thomas Morgan and William Williams to the same former information then in the same Court duly appeared and pleaded at bar and the said then Attorney-General for the said Lord the King made replication thereupon and the same Thomas Watson, Edward Gwynn, Thomas Morgan and William Williams, then and now defendants, thereupon then rejoined, and the same Attorney-General for the same Lord the King, then to the same rejoinder demurred and so those parties then here put themselves upon the judgment of the same Court and imparlance thereof was duly continued in the same Court from thence from term to term unto Tuesday the eighth day of July in the term of Holy Trinity last past, not determined, and at the same eighth day of July, in the same term the aforesaid Edward Northey, Esquire, then Attorney-General of the now Lord the King (who followed for the same Lord the King), present in the same Court before the Barons of this Exchequer, in his proper person, said that he for the same Lord the King did not wish to prosecute further in the premises against the aforesaid Thomas Watson, Edward Gwynn, Thomas Morgan and William Williams. Therefore it was then considered by the same Barons that the aforesaid Thomas Watson, Edward Gwynn, Thomas Morgan and William Williams should then go thereof without a day, saving always the action of the Lord the King if otherwise, &c. as by the rolls, memoranda, and records of this Exchequer more fully appears. And nevertheless the same Attorney-General for the same Lord the King renewed that information against the same Thomas Watson, Edward Gwynn, Thomas Morgan, and William Williams so as is aforesaid in the like and the self same words as he exhibited and now follows with the former information (the name of same Attorney-General and the time of the exhibiting only excepted) whereof they complain by protesting that they are mightily and excessively grieved, vexed, and inquieted, [yet for plea to that information, now against them prosecuted, the same Thomas Watson, Edward Gwynn, Thomas Morgan, and William Williams as to the coming with force and arms or whatsoever is in contempt of the said Lord the now King they say that they are in no wise thereof guilty, and of this they put themselves upon the country and the aforesaid Edward Northey Esquire, Attorney-General of the said Lord the now King, for the said Lord the King, likewise. And as to the remainder of the trespass aforesaid to wit the entry, intrusion and ingress into the tenements aforesaid with appurtenances in the said information above specified and the aforesaid receiving of the issues and profits thereof, above supposed to be done, the same Thomas, Edward Gwynn, Thomas Morgan and William Williams, say that it is well and true that the same tenements with appurtenances were and are parcel of the lands and possessions of the aforesaid Bishopric of St. David's as by the same information above is alledged but the same Thomas, Edward Gwynn, Thomas Morgan and William Williams say that long before the aforesaid first day of April in the twelfth year abovesaid in which it is supposed that the intrusion aforesaid was made, to wit, on the twenty-sixth day of June in the third year of the reign of the Lord James the Second, late King of England, &c., at Christs Colledge aforesaid (the Episcopal See of St. David's aforesaid being then and before that vacant by the natural death of John Lloyd, Professor of Sacred Theology then last Bishop of that Bishopric, and by reason thereof the tempo-

ralities of the same Bishopric then being in the hands and possession of the said late King) the same Thomas Watson, Professor of Sacred Theology, was in due manner elected, consecrated and made Bishop of that Bishopric and then and there became and was and as yet is, Bishop of St. David's.] And the same Thomas, being so Bishop of the said Bishopric of St. David's, the same late King James the Second by his letters patent sealed under the Great Seal of England, bearing date at Westminster on the first day of July in the above said third year of his reign (which the same Thomas, Edward Gwynn, Thomas Morgan, and William Williams, proffered here in Court) restored to the same Thomas, the aforesaid temporalities of the same Bishopric. And afterwards, to wit, on the twenty-third day of the same month of July in the abovesaid third year, the same Thomas was in due manner inducted, installed, and enthroned in the real, corporal, and actual possession of the same Bishopric, with all and singular, all its rights, members, and appurtenances (that is to say) at Christs Colledge aforesaid, by which the same Thomas long before the aforesaid time in which, &c. to wit on the same twenty-third day of July, in the abovesaid third year entered into the tenements aforesaid with appurtenances in the information aforesaid specified, parcel of the temporalities of the same Bishopric restored to him in form aforesaid, [and from thence and hitherto was and as yet is thereof seized in his demesne as of fee in right of that Bishopric and he in his own proper right as such Bishop, and the aforesaid Edward Gwynn, Thomas Morgan, and William Williams, as servants of the same Thomas, Bishop of St. David's, and by his command, received and had and as yet receive and have the issues and profits of the same tenements with appurtenances for the time aforesaid in the said information specified, as was and is well lawful to them, without that that on the aforesaid first day of April in the abovesaid twelfth year, or at any time after the same Thomas Watson was made Bishop of that Bishopric as is aforesaid, he vacated the aforesaid Episcopal See of St. David's, or it was or is vacant as by the information aforesaid above is supposed, all and singular which things the same Thomas Edward Gwynn, Thomas Morgan, and William Williams are prepared to verify as the Court, etc., whereof they pray judgment, and that they as to the premises and every of them may be dismissed from this Court, etc.] And the aforesaid Edward Northey, Attorney-General of the said Lord the King that now is, who follows for the same Lord the King, present here in Court at the same day in his proper person, protesting that the aforesaid Thomas Watson, Edward Gwynn, Thomas Morgan, and William Williams entered, intruded and made ingress in and upon the possession of all the temporalities of the same Bishopric of the said Lord the King that now is, and received and had the issues and profits thereof coming to their own proper use, and protesting and not acknowledging anything in the plea of the aforesaid Thomas Watson, Edward Gwynn, Thomas Morgan, and William Williams by them above pleaded, to be true in manner and form as the aforesaid Thomas Watson, Edward Gwynn, Thomas Morgan, and William Williams above alledge in pleading for the plea or replication, yet the same Attorney-General for the same Lord the King says that it is well and true that the aforesaid Thomas Watson on the aforesaid twenty-sixth day of June, in the third year of the reign of the said Lord James the second late King of England, etc., was elected, consecrated and made Bishop of the Bishopric of St. David's and then became

AUTHORITIES.

AUTHORITIES. and was Bishop of St. David's aforesaid, and that thereupon the same late King James the Second by his letters patent restored to the said Thomas Watson, then Bishop of St. David's aforesaid, the temporalities of the said Bishopric in manner and form as the aforesaid Thomas Watson, Edward Gwynn, Thomas Morgan and William Williams above alledge in pleading. [But the same Attorney-General of the said Lord the now King for the same Lord the King further says that afterwards, to wit, on the third day of the month of August in the year of our Lord one thousand six hundred and ninety-nine at Christs Colledge aforesaid in a certain cause or matter of correction instituted by virtue of his office by a certain Robert Lucy Esquire moved before Thomas, by divine providence then and as yet Archbishop of Canterbury, Primate and Metropolitan of All England, against the aforesaid Thomas Watson, then Bishop of St. David's aforesaid, and then suffragan of the Province of Canterbury, on account of divers crimes or excesses committed by the aforesaid Thomas Bishop of St. David's and especially the crime of Simony, the aforesaid Thomas Watson was on account of simony then and there removed and deprived in lawful and due manner those things being done which in that behalf of right were required by the aforesaid Thomas, Archbishop of Canterbury from his honour, dignity and place of Bishop of the Cathedral Church of St. David's and from the Bishopric of St. David's aforesaid by definitive sentence of the same Archbishop rightly and canonically pronounced.] By reason whereof the temporalities of the said Bishopric came to the hands of the said Lord the now King and were and as yet ought to be in the hands of the said Lord the now King. And the aforesaid Attorney-General, for the said Lord the now King, further says that afterwards, to wit, on the twenty-second day of February in the year of our Lord last above said, at Christs Colledge aforesaid upon the appeal of the aforesaid Thomas Watson from the aforesaid definitive sentence the aforesaid sentence was by John, Earl of Bridgewater, Thomas, Earl of Stamford, Ford, Earl of Tankerville, Lewis, Lord Rockingham, Simon, by Divine permission Bishop of Ely, John, by the same permission Bishop of Norwich, John by the same permission Bishop of Bristol, James by the same permission Bishop of Lincoln, John, by the same permission Bishop of Chichester, Sir George Treby, knight, then Chief Justice of the Bench of the said Lord the now King, Sir Edward Ward, knight, then and as yet Chief Baron of the Exchequer of the said Lord the now King, Sir John Powell, knight, then one of the Justices of the Bench of the said Lord the King, Sir Littleton Powys, knight, and Sir Henry Hatsell, knight, then two Barons of the Exchequer aforesaid of the said Lord the King, Sir Charles Hedges, knight, Doctor of Laws, Judge, Lieutenant or President of the Supreme Court of Admiralty of England, William King and Andoenus Wynne, Doctors of Laws, Judges, Delegates in that behalf rightly and lawfully constituted and appointed by letters patent or of commission under the great seal of England, bearing date at Westminster on the nineteenth day of August, in the eleventh year of the reign of the said Lord the now King, in that behalf in due manner made, by their definitive sentence or final decree to all effect of right, then and there confirmed and ratified. All and singular which things the aforesaid Attorney-General of the said Lord the now King, for the said Lord the King, is ready to verify as the Court, etc. and whereof he prays judgment and that the aforesaid Thomas Watson, Edward Gwynn, Thomas Morgan and William

Williams and every of them may be convicted of the entry, intrusion and ingress aforesaid. [And the aforesaid Thomas Watson (asserting that he is as yet Bishop of St. David's) and the aforesaid Edward Gwynn, Thomas Morgan and William Williams protesting that the same Thomas Watson in no lawful manner was convicted of any Simony nor thereof tried nor ever was thereof guilty nor of any other crime on account of which he or any Bishop ought or could lawfully be deprived or removed of or from his Bishopric, protesting also that the aforesaid replication or plea of the aforesaid Attorney-General for the said Lord the King above pleaded in replying, and the matters in the same contained are not sufficient in the law to convict the same Thomas Watson, Edward Gwynn, Thomas Morgan and William Williams of the premises in the information aforesaid specified for this cause (among others) that is to say because that replication is expressly repugnant and contradictory to the aforesaid protestation thereof, and the matter next and immediately following thereupon. Yet for their plea the same Thomas Watson, Edward Gwynn, Thomas Morgan and William Williams, say that the same Thomas being Bishop of St. David's as is aforesaid, and the temporalities of that Bishopric in form aforesaid, being restored to him as they above alledged, and as the aforesaid now Attorney-General also above acknowledged, afterwards and before the promulgation of the sentence aforesaid of the aforesaid Archbishop, to wit, on the twelfth day of October in the seventh year of the reign of the said Lord the King William the Third of England, etc. a certain writ of the same Lord the King out of his Chancery (the same Chancery then being at Westminster aforesaid) issued, directed to the same Thomas Bishop of St. David's, by the name of the Reverend Father in Christ, Thomas, Bishop of St. David's, by which same writ—reciting that—whereas the same Lord the King William, by the advice and assent of his Council for certain arduous and urgent matters concerning the same King, the estate and defence of his kingdom of England and the English Church, had ordained a certain Parliament of the same King to be held at his City of Westminster on the twenty-second day of November then next to come and therewith the same Thomas, Bishop of St. David's and with other Prelates Magnates and Nobles of his said Kingdom to hold conference and treaty—he commanded the same Bishop, firmly enjoining him by the faith and love by which he was held to the Lord the King, that considering the difficulty and imminent perils of the business and setting aside every excuse he should be personally] present on the said day and place with the same King and with the Prelates Magnates and Nobles aforesaid to treat about the said business and render his counsel. And this he, in nowise, should omit, as he loved the same King and his honour and the safety and defence of the Kingdom and Church aforesaid and the furtherance of the said business, warning the Dean and Chapter of his church of St. David's and the Archdeacons and all the clergy of his diocese, that the same Dean and Archdeacon in their proper persons, and the said Chapter by one and the same Clergy by two fit proctors having severally full and sufficient power from the same chapter and clergy, should personally be present on the aforesaid day and place to consent to those things which should then and there happen to be ordained by the common counsel of the said kingdom (the divine clemency being favourable); which same writ, afterwards and before the said twenty-second day of Novem-

AUTHORITIES.

AUTHORITIES

ber, to wit on the first day of the same month of November in the said seventh year, at Christs Colledge aforesaid was delivered to the same Thomas Watson as Bishop of St. David's by virtue of which writ the self same Thomas Watson as Bishop of St. David's on the same 22nd day of November appeared and was present at Westminster aforesaid in the House of the Lords of that Parliament there, among the Magnates and Nobles of this kingdom of England. And so among them was and continued as one of the Lords Spiritual in the same Parliament assembled during that session of that Parliament and by virtue of several other like writs of the same Lord the King William the Third directed by the same Thomas Watson as Bishop of St. David's in form aforesaid, he likewise appeared and was present in the said House of Lords among the Magnates and Nobles aforesaid at several other Parliaments of the same Lord the King, held at Westminster. And with the same had treaty and rendered his counsel as one of the Prelates and Lords Spiritual of those Parliaments upon the business aforesaid, according to the tenor and exigency of those writs, as by the memoranda and records of Parliament remaining in the same House of Lords of the Parliament at Westminster aforesaid more fully appears of record, and is sufficiently evident. [The same Thomas Watson, Edward Gwynne, Thomas Morgan, and William Williams therefore say that neither by the law of the land of this kingdom of England nor by any other ecclesiastical right of the English Church, nor by any canons of the Holy Church, the aforesaid Thomas, Archbishop of Canterbury, had any jurisdiction authority or lawful power to remove and deprive the same Thomas Watson, Bishop of St. David's and being one of the Lords Spiritual of Parliament (as is aforesaid) from his Bishoprick aforesaid, or from his honour, dignity, and place of Bishop, but he the said Archbishop by his mere judgment and of his will wrongfully by his definitive sentence on the aforesaid third day of August in the year of our Lord sixteen hundred and ninety-nine abovesaid, he adjudged the same Thomas Watson being Bishop of St. David's and a Spiritual Lord in Parliament (as is aforesaid) to be removed and deprived from his honour dignity and place of Bishop of the Cathedral Church of St. David's and from the Bishopric of St. David's aforesaid, and so that sentence was void and of no effect in law and not able to be ratified or confirmed in form aforesaid, and therefore the aforesaid confirmation and ratification of that sentence was also void invalid and of no effect in law], and this they are prepared to verify as the Court, etc. whereof as before they pray judgment and that they the same Thomas Watson Bishop of St. David's, Edward Gwynn, Thomas Morgan and William Williams, and every of them as to the premises may be dismissed from this Court etc. And the aforesaid Edward Northey, Attorney-General of the said Lord the King, that now is who follows for the same Lord the King, present here in Court on the same day in his proper person, for the same Lord the King, says that the aforesaid Thomas Watson, Edward Gwynn, Thomas Morgan and William Williams, above pleaded in rejoinding and the matters in the same contained are not sufficient in the law to which the same Attorney-General of the said Lord the King is not bound nor by the law of the land is held for the same Lord the King in any manner to answer and for reasons of a demurrer the aforesaid Attorney-General shews and demonstrates here in Court these following reasons, because the rejoinder of the aforesaid Thomas Watson Edward Gwynn Thomas Morgan

and William Williams is crafty and uncertain and lacks form and has departed from their former plea and because the rejoinder aforesaid does not contain matter of fact nor answer to the facts in the replication of the same Attorney-General contained, but is a verification of the law upon fact against the law because [it sufficiently appears to the Court here that the aforesaid Thomas Archbishop of Canterbury had jurisdiction authority and lawful power to remove and deprive the same Thomas Watson from the Bishopric of St. David's in manner and form in the aforesaid Replication of the same Attorney-General above contained.] All and singular which things the aforesaid Attorney-General for the said Lord the King is ready to verify, whereof the aforesaid Attorney-General for the said Lord the King as above prays judgment. And the same Thomas Watson Edward Gwynn Thomas Morgan and William Williams and every of them may be convicted of the entry intrusion and ingress aforesaid, &c. And the aforesaid Thomas Watson Edward Gwynne Thomas Morgan and William Williams (of whom the said Attorney-General of the now Lord the King does not show or demonstrate any thing or any things in which or wherefore the aforesaid rejoinder of the same Thomas Watson Edward Gwynn Thomas Morgan and William is crafty or uncertain or lacks form and of which the matter in the said rejoinder contained is sufficient answer to the facts and matter in the replication of the said Attorney-General contained and newly assigned as the confession and avoidance thereof and in no wise has departed from their former plea because the removal and deprivation of the said Thomas Bishop of St. David's from the honour and dignity and his place of Bishop and from the Bishopric aforesaid are wholly new matters and before being alleged could not be answered, and the said rejoinder and every the like plea not concluded ought to be verified to the country) say that (the causes and objections aforesaid notwithstanding) their plea aforesaid above pleaded in rejoining and the matter in the same contained are good and sufficient in the law, to the replication aforesaid and to exonerate the same Thomas Watson Edward Gwynn Thomas Morgan and William, from the premises in the Information aforesaid specified against the said Lord the King which same matter they are ready to verify. And because the said Attorney-General of the now Lord the King did not deny that matter for the same Lord the King neither did he in anywise answer to it but wholly refused to admit that verification, the same Thomas Watson, Edward, Thomas Morgan, and William as before pray judgment, and that they and every of them concerning the premises may be dismissed from this Court, &c. Therefore to judgment. And because the Barons here wish to inform themselves of and in the premises before they give their judgment thereof, day is given here to the aforementioned Thomas Watson Edward Gwynne Thomas Morgan and William Williams in the same state as now until a day within the three weeks of Easter, to hear their judgment thereof. Because the same Barons thereof not yet, &c. Before which day the said Lord the King William the Third closed his last day, and the Lady the now Queen Anne succeeded the same Lord the late King William the Third to the rule of this Kingdom and took upon her the rule of the same Kingdom. At which same three weeks of Easter the same Thomas Watson Edward Gwynn Thomas Morgan and William Williams came here as before. And because the Barons of the Exchequer of the said Lady the now Queen here wished further to inform

AUTHORITIES. themselves of and in the premises before they give their judgment thereof: a further day is given here to the aforesaid Thomas Watson Edward Gwynne Thomas Morgan and William Williams, in the same state as now, unto the morrow of Holy Trinity to hear their judgment thereof. Because the same Barons thereof not yet &c. At which day the same Thomas Watson Edward Gwynne Thomas Morgan and William Williams came here as before. And because the Barons here wished further to inform themselves of and in the premises before they give their judgment thereof day thereof is further given here to the aforesaid Thomas Watson Edward Gwynne Thomas Morgan and William Williams, in the same state as now, until a day within three weeks of St. Michael to hear their judgment thereof, because the same Barons thereof, not yet, &c. At which day the same Thomas Watson Edward Gwynne Thomas Morgan and William Williams came here as before. And because the Barons here wished further to inform themselves of and in the premises before they give their judgment thereof day thereof is further given here to the aforesaid Thomas Watson Edward Gwynne Thomas Morgan and William Williams, in the same state as now, unto the Octaves of St. Hilary to hear their judgment thereof, because the same Barons not yet &c. At which day the same Thomas Watson Edward Gwynne Thomas Morgan and William Williams came here as before. And because the Barons here wished further to inform themselves of and in the premises before they give their judgment thereof further day is given here to the aforesaid Thomas Watson Edward Gwynne Thomas Morgan and William Williams, in the same state as now, until a day within fifteen days of Easter, to hear their judgment thereof, because the same Barons thereof not yet, &c. At which day the same Thomas Watson Edward Gwynne Thomas Morgan and William Williams came here as before. And because the Barons here wished further to inform themselves of and in the premises before giving their judgment thereof, day thereof is further given here to the aforesaid Thomas Watson Edward Gwynne Thomas Morgan and William Williams in the same state as now unto the morrow of Holy Trinity to hear their judgment thereof, because the same Barons thereof not yet, &c. [At which day the same Thomas Watson Edward Gwynne Thomas Morgan and William Williams came here as before. And because the Barons here wished further to inform themselves of and in the premises before they give their judgment thereof, a day thereof is further given here to the aforesaid Thomas Watson Edward Gwynne Thomas Morgan and William Williams, in the same state as now, unto a day within three weeks of St. Michael thereof, to hear their judgment thereof, because the same Barons not yet, &c. At which day the same Thomas Watson Edward Gwynne Thomas Morgan and William Williams came here as before. And the aforesaid Sir Edward Northey, Knight, now Attorney-General of the said now Lady the Queen, who follows for the same now Lady the Queen, present here in Court at the same day in his proper person, having relinquished the verification of the issue above joined to be tried by the country, says that he does not wish further to prosecute as regards the issue aforesaid for the said Lady the Queen against the aforesaid Thomas Watson Edward Gwynne Thomas Morgan and William Williams.] Therefore it is considered by the Barons here that the aforesaid Thomas Watson Edward Gwynne Thomas Morgan and William Williams may thereof go without a day. [And as regards the aforesaid

plea of the aforesaid Thomas Watson Edward Gwynne Thomas Morgan and William Williams by them above pleaded in rejoining whereof the aforesaid Attorney-General and the aforesaid Thomas Watson Edward Gwynne Thomas Morgan and William Williams above put themselves upon the judgment of the Court, the same Attorney-General of the said Lady the Queen for the same Lady the Queen prays judgment. Whereupon the premises being viewed by the Barons here and mature deliberation being had thereupon between the same. Because it seems to the same Barons that the aforesaid plea of the aforesaid Thomas Watson Edward Gwynne Thomas Morgan and William Williams by them above pleaded by in rejoining and the matters contained in the same are not sufficient in the law to exonerate the same aforesaid Thomas Watson Edward Gwynne Thomas Morgan and William Williams from the entry intrusion and ingress aforesaid in the information aforesaid specified. It is considered by the same Barons that the aforesaid Thomas Watson Edward Gwynne Thomas Morgan and William Williams be convicted of the intrusion and entry aforesaid in the information aforesaid specified and that each of them be convicted and that they be and every of them removed from the possession of the aforesaid premises in the information specified. And that they the aforesaid Thomas Watson Edward Gwynne Thomas Morgan and William Williams be attached by their bodies wheresoever &c., to make a fine with the said Lady the Queen for the entry intrusion and ingress aforesaid, whereof they were convicted in form aforesaid, and it is commanded to the sheriff, &c.

Afterwards to wit, on the 24th day of November in the second year of the reign of the said Lady Queen Anne, the same Lady the Queen sent here her writ close under foot of the Great Seal of England, directed to the Treasurer and Barons of this Exchequer in these words:—To wit [writ set out].

[At which same 26th day of November the Most Noble Sir Nathan Wright, Knight, Lord Keeper of the Great Seal of England and Sidney Lord Godolphin Lord Treasurer of England came in their proper persons into the aforesaid Council Chamber next the Exchequer aforesaid called le Counsell Chamber and caused to come before them in the Chamber aforesaid the Record and process aforesaid with all things touching them and at the same day and place before the aforesaid Lord Keeper of the Great Seal and the Lord Treasurer came as well the aforesaid Thomas Watson professor of Sacred Theology Edward Wynne Thomas Morgan and William Williams as the aforesaid Sir Edward Northey Knight Attorney-General of the said Lady the Queen in their proper persons and the same Thomas Watson Edward Gwynne Thomas Morgan and William Williams forthwith say that in the Record and process aforesaid and also in the rendering of the judgment aforesaid there is an error in this—namely, that the judgment aforesaid was rendered for the aforesaid Lady the Queen against them the aforesaid Thomas Watson Edward Gwynne Thomas Morgan and William Williams where the judgment aforesaid ought to be rendered for the aforesaid Thomas Watson Edward Gwynne Thomas Morgan and William Williams against the aforesaid Lady the Queen Therefore there is manifestly an error in it And this the aforesaid Thomas Watson Edward Gwynne Thomas Morgan and William Williams are prepared to verify And they pray that the judgment aforesaid be reversed, annulled, and altogether held for nothing on account of the error aforesaid, and the other things being in the

AUTHORITIES. Record and process aforesaid], and that they the same Thomas Watson, Edward Gwynne, Thomas Morgan, and William Williams may be restored to all the things which they lost by reason of the judgment aforesaid And the aforesaid Sir Edward Northey, Knight, Attorney-General of the said Lady the Queen—a hearing being had of the Record and process aforesaid, also of the error aforesaid by the aforesaid Thomas Watson, Edward Gwynne, Thomas Morgan, and William Williams—above assigned for the same Lady the Queen, says that there is no error in the Record and process aforesaid, and in the rendering of the judgment aforesaid, and he prays for the same Lady the Queen that the Court of the Lady the Queen here may proceed to the examination as well of the Record and process aforesaid as of the matters aforesaid above assigned for the error and that the judgment aforesaid be affirmed in all things. And the aforesaid Thomas Watson, Edward Gwynne, Thomas Morgan and William Williams likewise pray. And because the aforesaid Lord Keeper of the Great Seal and the Lord Treasurer wish to deliberate in the premises before further &c. a day is given as well to the aforesaid Thomas Watson, Edward Gwynne, Thomas Morgan and William Williams as to the aforesaid Attorney-General of the said Lady the Queen until Tuesday the 1st day of February in the Term of S. Hilary next to come in the same state as now in the Chamber aforesaid. At which same 1st day of February aforesaid the Lord Keeper of the Great Seal and the Lord Treasurer did not come into the aforesaid Council Chamber next the Exchequer aforesaid called le Counsell Chamber but Sir Thomas Trevor knight Chief Justice of the Common Bench came at the same day into the Chamber aforesaid and was then and there present according to the form of the Statute in such case made and provided. And at the said day and place before the aforesaid Chief Justice came as well the aforesaid Thomas Watson, Edward Gwynne, Thomas Morgan and William Williams as the aforesaid Attorney-General of the said Lady the Queen in their proper persons and the aforesaid business and suit of errors is further adjourned by the aforesaid Chief Justice and continued by virtue of the Statute aforesaid until Tuesday the 16th day of May in Easter Term next to come. And the same day is given here as well to the aforesaid Thomas Watson, Edward Gwynne, Thomas Morgan and William Williams as to the aforesaid Attorney-General of the said Lady the Queen in the same state as now in the Chamber aforesaid. At which same 16th day of May the aforesaid Lord Keeper of the Great Seal and the Lord Treasurer came into the aforesaid Council Chamber next the Exchequer aforesaid called le Counsell Chamber and were then and there present according to the form of the Statute aforesaid and at the same day and place before the aforesaid Lord Keeper of the Great Seal and the Lord Treasurer came as well the aforesaid Thomas Watson, Edward Gwynne, Thomas Morgan and William Williams as the aforesaid Attorney-General of the said Lady the Queen in their proper persons. And the aforesaid business and suit of errors is further adjourned by the aforesaid Lord Keeper of the Great Seal and the Lord Treasurer, and continued by virtue of the statute aforesaid until Tuesday, the 27th day of June, in the Term of Holy Trinity next to come. And the same day is given here as well to the aforesaid Thomas Watson, Edward Gwynne, Thomas Morgan and William Williams as to the aforesaid Attorney-General of the said Lady the Queen in the same state as now in the Chamber aforesaid. At which same

27th day of June the aforesaid Lord Keeper of the Great Seal of England and the Lord Treasurer of England did not come into the aforesaid Council Chamber next the Exchequer aforesaid called le Counsell Chamber, nor did either of them come but the aforesaid Sir Thomas Trevor, Knight, Chief Justice of the said Lady the Queen of the Common Bench came at the same day in the chamber aforesaid and was then and there present according to the form of the statute aforesaid. And at the same day and place before the aforesaid Chief Justice came as well the aforesaid Thomas Watson, Edward Gwynne, Thomas Morgan and William Williams as the aforesaid Attorney-General of the said Lady the Queen in their proper persons and the aforesaid business and suit of errors is further adjourned by the same Chief Justice and continued by virtue of the statute aforesaid until Tuesday the 31st day of October in the Term of S. Michael next to come. And the same day is given here as well to the aforesaid Thomas Watson, Edward Gwynne, Thomas Morgan and William Williams as to the aforesaid Attorney-General of the said Lady the Queen in the same state as now in the Chamber aforesaid. At which same 31st day of October the aforesaid Lord Keeper of the Great Seal of England and the Lord Treasurer of England did not come into the aforesaid Council Chamber next the Exchequer aforesaid called le Counsell Chamber, nor did either of them come but the aforesaid Sir Thomas Trevor, Knight, Chief Justice of the said Lady the Queen of the Common Bench came at the same day in the Chamber aforesaid and was then and there present according to the form of the Statute aforesaid, and at the same day and place, before the aforesaid Chief Justice, there came as well the aforesaid Thomas Watson, Edward Gwynne, Thomas Morgan, and William Williams, as the aforesaid Attorney-General of the said Lady the Queen, in their proper persons and the aforesaid business and suit of error was further adjourned by the aforesaid Chief Justice and continued by virtue of the statute aforesaid unto Tuesday the twenty-first day of November in the same term of St. Michael and the same day is given here as well to the aforesaid Thomas Watson, Edward Gwynne, Thomas Morgan, and William Williams as to the aforesaid Attorney-General of the said Lady the Queen in the same state as now in the chamber aforesaid. [At which same twenty-first day of November the aforesaid Sir Nathan Wright, knight, Lord Keeper of the Great Seal of England, and Sidney Lord Godolphin, Lord Treasurer of England, in the aforesaid Council Chambers next the Exchequer aforesaid called le Counsell Chamber, came and were then and there present according to the form of the statute aforesaid, and at the same day and place before the aforesaid Lord Keeper of the Great Seal of England, and the Lord Treasurer came as well the aforesaid Thomas Watson, Edward Gwynne, Thomas Morgan and William Williams as the aforesaid Attorney-General of the said Lady the Queen in their proper persons. Whereupon the premises being viewed by the same Lord Keeper of the Great Seal of England and the Lord Treasurer, having taken to themselves Sir John Holt Knight Chief Justice of the said Lady the Queen assigned to hold pleas before the Queen herself and the aforesaid Sir Thomas Trevor, Knight, Chief Justice of the Common Bench of the said Lady the Queen, and being called before the aforesaid Lord Keeper of the Great Seal of England and the Lord Treasurer, and the Barons of the Exchequer aforesaid, and having heard the informations of the same Barons

AUTHORITIES

and the reasons of their judgment aforesaid, and mature deliberation being had thereof by the aforesaid Lord Keeper of the Great Seal of England and the Lord Treasurer because it seems to the aforementioned Lord Keeper of the Great Seal and the Lord Treasurer of the advice of the aforementioned Chief Justice that in the record and process aforesaid, and in the rendering of the judgment aforesaid there was in no wise error.

Therefore it is considered by the same Lord Keeper of the Great Seal of England and the Lord Treasurer of England that the judgment aforesaid in all things shall be affirmed, and shall stand in its full strength and vigour, the said matter above by the error assigned in any wise notwithstanding, and that the record aforesaid shall be sent back into the Exchequer for execution thereof to be made for the said Lady the Queen as is right.]

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